

ARKANSAS CODE OF 1987 ANNOTATED



2013 SUPPLEMENT VOLUME 6

Place in pocket of bound volume

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

Senator David Johnson, *Chair*

Senator David Burnett

Representative John Vines

Representative Darrin Williams

Honorable Bettina E. Brownstein

Honorable Don Schnipper

Honorable David R. Matthews

Honorable Stacy Leeds, *Dean, University of Arkansas at
Fayetteville, School of Law*

Honorable Michael H. Schwartz, *Dean, University of Arkansas at
Little Rock, School of Law*

Honorable Warren T. Readnour, *Senior Assistant Attorney General*

Honorable Matthew Miller, *Assistant Director for Legal Services of
the Bureau of Legislative Research*



LexisNexis®

COPYRIGHT © 2013
BY
THE STATE OF ARKANSAS

All Rights Reserved

LexisNexis and the Knowledge Burst logo are registered trademarks, and Michie is a trademark of Reed Elsevier Properties Inc. used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

*For information about this Supplement, see the
Supplement pamphlet for Volume 1*

5055320

ISBN 978-0-327-10031-7 (Code set)
ISBN 978-0-7698-4662-0 (Volume 6)



Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexis.com

TITLE 7

ELECTIONS

CHAPTER.

1. GENERAL PROVISIONS.
3. POLITICAL PARTIES.
4. BOARDS OF ELECTION COMMISSIONERS AND OTHER ELECTION OFFICERS.
5. ELECTION PROCEDURE GENERALLY.
6. CAMPAIGN PRACTICES.
7. NOMINATIONS AND PRIMARY ELECTIONS.
8. FEDERAL ELECTIONS.
9. INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS.
10. NONPARTISAN ELECTIONS.
11. SPECIAL ELECTIONS.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 7-1-101. Definitions. [Effective until contingency met.]
- 7-1-101. Definitions. [Contingent effective date.]
- 7-1-103. Miscellaneous misdemeanor offenses — Penalties.

SECTION.

- 7-1-111. Use of public funds to support or oppose ballot measure.
- 7-1-112. Destruction of a ballot or ballot materials — Prohibited.
- 7-1-113. Vote centers.

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“ (1) January 1, 2014; or

“ (2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

7-1-101. Definitions. [Effective until contingency met.]

As used in this title, unless the context or chapter otherwise requires:

(1) “Administrator” means the administrative head of a long-term care or residential care facility licensed by the state who is authorized in writing by a patient of the long-term care or residential care facility to deliver the application for an absentee ballot and to obtain or deliver the absentee ballot to the county clerk;

(2) “Affidavit of eligibility” means an affidavit signed by a candidate for elective office stating that the candidate is eligible to serve in the office he or she seeks;

(3) “Audit log” means an electronically stored record of events and ballot images from which election officials may produce a permanent

paper record with a manual audit capacity for a voting system using voting machines;

(4) "Authorized agent" means a person who is identified and authorized to deliver the application, obtain a ballot, and deliver the ballot on the day of the election to the county clerk for an applicant who is medically unable to cast a ballot at a polling site due to an unforeseen medical necessity as set forth in an affidavit from the administrator of a hospital or long-term care or residential care facility;

(5) "Canvassing" means examining and counting the returns of votes cast at a public election to determine authenticity;

(6) "Certificate of choice" means a certificate, signed by an executive officer of a political group that submits a petition to place its candidates for President and Vice-President on the ballot, designating the names of its candidates to appear on the ballot;

(7) "Constitutional officers of this state" means the offices of the Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of State, Treasurer of State, and Commissioner of State Lands;

(8) "Counting location" means a location selected by the county board of election commissioners with respect to all elections for the automatic processing or counting, or both, of votes;

(9) "Designated bearer" means any person who is identified and authorized by the applicant to obtain from the county clerk or to deliver to the county clerk the applicant's ballot;

(10) "Election official" or "election officer" means a person who is a member of the county board of election commissioners or a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff;

(11) "Electronic poll book" means hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site on election day;

(12) "Electronic vote tabulating device" means a device used to electronically scan a marked paper ballot for the purpose of tabulation;

(13) "Fail-safe voting" means the mechanism established under the National Voter Registration Act of 1993 that allows a voter who has moved within the same county to vote at his or her new precinct without having updated his or her voter registration records;

(14) "First-time voter" means any registered voter who has not previously voted in a federal election in the state;

(15) "General or special election" means the regular biennial or annual election for election of United States, state, district, county, township, and municipal officials and the special elections to fill vacancies therein and special elections to approve any measure. The term as used in this act shall not apply to school elections for officials of school districts;

(16) "Infamous crimes" for the purposes of Arkansas Constitution, Article 5, § 9, includes:

(A) A felony offense;

(B) A misdemeanor theft of property offense;

(C) Abuse of office, § 5-52-107;

(D) Tampering, § 5-53-110; or

(E) A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement;

(17) "Majority party" means that political party in the State of Arkansas whose candidates were elected to a majority of the constitutional offices of this state in the last preceding general election;

(18) "Marking device" means any approved device for marking a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device;

(19) "Member of the merchant marine" means:

(A) An individual employed as an officer or crew member of:

(i) A vessel documented under the laws of the United States;

(ii) A vessel owned by the United States; or

(iii) A vessel of foreign-flag registry under charter or control of the United States;

(B) An individual enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel; or

(C) As defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (19);

(20) "Minority party" means that political party whose candidates were elected to less than a majority of the constitutional offices of this state in the last preceding general election or the political party that polled the second greatest number of votes for the office of Governor in the last preceding general election if all of the elected constitutional officers of this state are from a single political party;

(21)(A) "Nonpartisan candidate" means a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan candidate" does not include a candidate for nonpartisan municipal office;

(22)(A) "Nonpartisan election" means a general, special, or runoff election for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan election" does not include a general, special, or runoff election for a nonpartisan municipal office;

(23)(A) "Nonpartisan office" means the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan office" does not include a nonpartisan municipal office;

(24) "Party certificate" means a written statement or receipt signed by the secretary or chair of the county committee or of the state

committee, as the case may be, of the political party evidencing the name and title proposed to be used by the candidate on the ballot, the position the candidate seeks, payment of the fees, and filing of the party pledge, if any, required by the political party;

(25) "Party filing period" means the period of time established by law for the candidate for a political party's nomination to file his or her party certificate with the Secretary of State or county clerk, as the case may be;

(26)(A) "Political party" means any group of voters that at the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) A group of electors shall not assume a name or designation that is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party;

(27) "Polling site" means a location selected by the county board of election commissioners where votes are cast;

(28) "Precinct" means a geographical area, the boundaries of which are determined by a county board of election commissioners in order to facilitate voting by the registered voters from that geographical area;

(29) "Primary election" means any election held by a political party in the manner provided by law for the purpose of selecting nominees of the political party for certification as candidates for election at any general or special election in this state;

(30) "Provisional ballot" means a ballot:

(A) Cast by special procedures to record a vote when there is some question concerning a voter's eligibility; and

(B) Counted contingent upon the verification of the voter's eligibility;

(31) "Qualified elector" means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51;

(32) "Sample ballot" means a ballot for distribution to the public or the press marked with the word "SAMPLE" so as to prevent the production of counterfeit ballots;

(33) "Uniformed services" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and United States Coast Guard, the United States Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps, or as defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (34);

(34) "Vacancy in election" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising

prior to election to the office at a general or special election but arising subsequent to the certification of the ballot;

(35) "Vacancy in nomination" means the circumstances in which:

(A) The person who received the majority of votes at the preferential primary election or general primary election cannot accept the nomination due to death or notifies the party that he or she will not accept the nomination due to serious illness, moving out of the area from which the person was elected as the party's nominee, or filing for another office preceding the final date for certification of nominations; or

(B) There is a tie vote for the same office at a general primary election;

(36)(A) "Vacancy in office" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising subsequent to election to the office at a general or special election or arising subsequent to taking office and before the expiration of the term of office in those circumstances wherein the vacancy must be filled by a special election rather than by appointment.

(B) "Vacancy in office" does not apply to the election of a person at a general election to fill an unexpired portion of a term of office;

(37) "Vote center" means an election day location designated by the county clerk or county board of election commissioners at which a qualified elector from any precinct in the county holding the election may vote;

(38) "Voter-verified paper audit trail" means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot that:

(A) Allows the voter to verify the voter-verified paper audit trail before the casting of the voter's ballot;

(B) Is not retained by the voter;

(C) Does not contain individual voter information;

(D) Is produced on paper that is sturdy, clean, and resistant to degradation; and

(E) Is readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic code;

(39) "Voting machine" means either:

(A) A direct-recording electronic voting machine that:

(i) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

(ii) Processes the data by means of a computer program;

(iii) Records voting data and ballot images in internal and external memory components; and

(iv) Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or

(B) An electronic device for marking a paper ballot to be electronically scanned; and

(40) "Voting system" means:

(A) The total combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment that is used to:

- (i) Define ballots;
- (ii) Cast and count votes;
- (iii) Report or display election results; and
- (iv) Maintain and produce any audit trail information; and

(B) The practices and documentation used to:

- (i) Identify system components and versions of components;
- (ii) Test the system during its development and maintenance;
- (iii) Maintain records of system errors and defects;
- (iv) Determine specific system changes to be made to a system after the initial qualification of the system; and
- (v) Make available any materials to the voter, including without limitation notices, instructions, forms, or paper ballots.

History. Acts 1969, No. 465, Art. 1, § 1; 1971, No. 261, § 1; 1977, No. 888, § 3; A.S.A. 1947, § 3-101; Acts 1987, No. 123, § 12; 1991, No. 241, § 1; 1995, No. 946, § 1; 1995, No. 963, § 1; 1997, No. 445, § 1; 1997, No. 1082, § 1; 1999, No. 1342, § 1; 2003, No. 994, § 1; 2003, No. 1731, § 1; 2005, No. 2233, § 2; 2007, No. 224, § 1; 2007, No. 1020, § 1; 2009, No. 250, § 1; 2009, No. 659, § 5; 2009, No. 959, § 2; 2009, No. 1480, § 14; 2011, No. 203, § 1; 2013, No. 724, § 3; 2013, No. 1110, § 1; 2013, No. 1126, § 1; 2013, No. 1211, § 1; 2013, No. 1297, § 1; 2013, No. 1389, § 1.

A.C.R.C. Notes. Acts 2013, No. 724, § 1, provided: "Legislative intent.

"(1) Article 5, § 9, of the Constitution of the State of Arkansas states that '[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.'

"(2) In interpreting that constitutional provision, the Supreme Court of Arkansas has 'consistently recognized that a person convicted of a felony or one of the specifically enumerated offenses is disqualified from holding public office under Article 5, Section 9, of the Arkansas Constitution.' State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005). However, while the Court has expounded on what constitutes an 'infamous crime', such as when it spoke of an offense 'indicative of great moral turpitude',

State v. Irby, 190 Ark. 786, 81 S.W.2d 419 (1935), it has not until very recently attempted to define the term.

"(3) In 2005, the Supreme Court determined that, aside from the specifically named crimes in Article 5, § 9, an 'infamous crime' involved dishonesty. Oldner, 361 Ark. at 327, 206 S.W.3d at 822. In 2010, the Supreme Court specifically held that theft constituted an 'infamous crime'. Edwards v. Campbell, 2010 Ark. 398, 370 S.W.3d 250 (2010). This, however, is as specific as the Supreme Court has gotten, as it further noted that 'a crime is not considered infamous based on the available punishment but rather is considered infamous based on the underlying nature of that crime.' Id.

"(4) Because of the uncertainty associated with the term 'infamous crime', and in the interests of educating the general public and potential office holders about who is or is not eligible to hold public office in this state, it is the intent of the General Assembly to define the term 'infamous crime' for the purpose of assisting the judiciary in its further definitional refinements."

Acts 2013, No. 724, § 2, provided: "Legislative findings.

"The General Assembly finds that:

"(1) Article 5, § 9, of the Constitution of the State of Arkansas states that '[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of hold-

ing any office of trust or profit in this State’;

“(2) A definition of ‘infamous crime’ should also encompass those criminal offenses that lead to a loss of public confidence as well as offenses in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense that involves some element of deceitfulness, untruthfulness, or falsification; and

“(3) A reviewing court should also measure certain variables when determining what constitutes an ‘infamous crime’, such as the attendant mental state of the offense, the particular circumstances surrounding the charged offense, the age and education of the person committing the offense, and, if the offense occurred before the person has assumed public office, the

age of the person at the time of the conviction itself.”

Amendments. The 2013 amendment by No. 724 added the definition for “Infamous crimes.”

The 2013 amendment by No. 1110 added definitions for “Nonpartisan candidate,” “Nonpartisan election,” and “Nonpartisan office.”

The 2013 amendment by No. 1126 substituted “Vacancy in office does” for “The phrase ‘vacancy’ shall” in present (37)(B).

The 2013 amendment by No. 1211 added the definition for “Precinct.”

The 2013 amendment by No. 1297 added the definition for “Electronic poll book.”

The 2013 amendment by No. 1389 added the definition for “Vote center.”

7-1-101. Definitions. [Contingent effective date.]

As used in this title, unless the context or chapter otherwise requires:

(1) “Administrator” means the administrative head of a long-term care or residential care facility licensed by the state who is authorized in writing by a patient of the long-term care or residential care facility to deliver the application for an absentee ballot and to obtain or deliver the absentee ballot to the county clerk;

(2) “Affidavit of eligibility” means an affidavit signed by a candidate for elective office stating that the candidate is eligible to serve in the office he or she seeks;

(3) “Audit log” means an electronically stored record of events and ballot images from which election officials may produce a permanent paper record with a manual audit capacity for a voting system using voting machines;

(4) “Authorized agent” means a person who is identified and authorized to deliver the application, obtain a ballot, and deliver the ballot on the day of the election to the county clerk for an applicant who is medically unable to cast a ballot at a polling site due to an unforeseen medical necessity as set forth in an affidavit from the administrator of a hospital or long-term care or residential care facility;

(5) “Canvassing” means examining and counting the returns of votes cast at a public election to determine authenticity;

(6) “Certificate of choice” means a certificate, signed by an executive officer of a political group that submits a petition to place its candidates for President and Vice-President on the ballot, designating the names of its candidates to appear on the ballot;

(7) “Constitutional officers of this state” means the offices of the Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of State, Treasurer of State, and Commissioner of State Lands;

(8) "Counting location" means a location selected by the county board of election commissioners with respect to all elections for the automatic processing or counting, or both, of votes;

(9) "Designated bearer" means any person who is identified and authorized by the applicant to obtain from the county clerk or to deliver to the county clerk the applicant's ballot;

(10) "Election official" or "election officer" means a person who is a member of the county board of election commissioners or a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff;

(11) "Electronic poll book" means hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site on election day;

(12) "Electronic vote tabulating device" means a device used to electronically scan a marked paper ballot for the purpose of tabulation;

(13) "Fail-safe voting" means the mechanism established under the National Voter Registration Act of 1993 that allows a voter who has moved within the same county to vote at his or her new precinct without having updated his or her voter registration records;

(14) "First-time voter" means any registered voter who has not previously voted in a federal election in the state;

(15) "General or special election" means the regular biennial or annual election for election of United States, state, district, county, township, and municipal officials and the special elections to fill vacancies therein and special elections to approve any measure. The term as used in this act shall not apply to school elections for officials of school districts;

(16) "Infamous crimes" for the purposes of Arkansas Constitution, Article 5, § 9, includes:

(A) A felony offense;

(B) A misdemeanor theft of property offense;

(C) Abuse of office, § 5-52-107;

(D) Tampering, § 5-53-110; or

(E) A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement;

(17) "Majority party" means that political party in the State of Arkansas whose candidates were elected to a majority of the constitutional offices of this state in the last preceding general election;

(18) "Marking device" means any approved device for marking a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device;

(19) "Member of the merchant marine" means:

(A) An individual employed as an officer or crew member of:

(i) A vessel documented under the laws of the United States;

(ii) A vessel owned by the United States; or

(iii) A vessel of foreign-flag registry under charter or control of the United States;

(B) An individual enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel; or

(C) As defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (19);

(20) "Minority party" means that political party whose candidates were elected to less than a majority of the constitutional offices of this state in the last preceding general election or the political party that polled the second greatest number of votes for the office of Governor in the last preceding general election if all of the elected constitutional officers of this state are from a single political party;

(21)(A) "Nonpartisan candidate" means a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan candidate" does not include a candidate for nonpartisan municipal office;

(22)(A) "Nonpartisan election" means a general, special, or runoff election for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan election" does not include a general, special, or runoff election for a nonpartisan municipal office;

(23)(A) "Nonpartisan office" means the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.

(B) "Nonpartisan office" does not include a nonpartisan municipal office;

(24) "Party certificate" means a written statement or receipt signed by the secretary or chair of the county committee or of the state committee, as the case may be, of the political party evidencing the name and title proposed to be used by the candidate on the ballot, the position the candidate seeks, payment of the fees, and filing of the party pledge, if any, required by the political party;

(25) "Party filing period" means the period of time established by law for the candidate for a political party's nomination to file his or her party certificate with the Secretary of State or county clerk, as the case may be;

(26)(A) "Political party" means any group of voters that at the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) A group of electors shall not assume a name or designation that is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or

nominees for presidential electors, it shall cease to be a political party;

(27) "Polling site" means a location selected by the county board of election commissioners where votes are cast;

(28) "Precinct" means a geographical area, the boundaries of which are determined by a county board of election commissioners in order to facilitate voting by the registered voters from that geographical area;

(29) "Primary election" means any election held by a political party in the manner provided by law for the purpose of selecting nominees of the political party for certification as candidates for election at any general or special election in this state;

(30)(A) "Proof of identity" means:

(i) A voter identification card under § 7-5-322; or

(ii) A document or identification card that:

(a) Shows the name of the person to whom the document was issued;

(b) Shows a photograph of the person to whom the document was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date:

(1) Is not expired; or

(2) Expired no more than four (4) years before the date of the election in which the person seeks to vote.

(B) A proof of identity that complies with the requirements under subdivision (30)(A) of this section may include without limitation:

(i) A driver's license;

(ii) A photo identification card;

(iii) A concealed handgun carry license;

(iv) A United States passport;

(v) An employee badge or identification document;

(vi) A United States military identification document;

(vii) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;

(viii) A public assistance identification card; and

(ix) A voter identification card under § 7-5-322;

(31) "Provisional ballot" means a ballot:

(A) Cast by special procedures to record a vote when there is some question concerning a voter's eligibility; and

(B) Counted contingent upon the verification of the voter's eligibility;

(32) "Qualified elector" means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51;

(33) "Sample ballot" means a ballot for distribution to the public or the press marked with the word "SAMPLE" so as to prevent the production of counterfeit ballots;

(34) "Uniformed services" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and United States Coast Guard, the United States Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps, or as defined in the federal Uniformed and Overseas Citizens Absentee Voting Act if different from the definition stated in this subdivision (34);

(35) "Vacancy in election" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising prior to election to the office at a general or special election but arising subsequent to the certification of the ballot;

(36) "Vacancy in nomination" means the circumstances in which:

(A) The person who received the majority of votes at the preferential primary election or general primary election cannot accept the nomination due to death or notifies the party that he or she will not accept the nomination due to serious illness, moving out of the area from which the person was elected as the party's nominee, or filing for another office preceding the final date for certification of nominations; or

(B) There is a tie vote for the same office at a general primary election;

(37)(A) "Vacancy in office" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising subsequent to election to the office at a general or special election or arising subsequent to taking office and before the expiration of the term of office in those circumstances wherein the vacancy must be filled by a special election rather than by appointment.

(B) "Vacancy in office" does not apply to the election of a person at a general election to fill an unexpired portion of a term of office;

(38) "Vote center" means an election day location designated by the county clerk or county board of election commissioners at which a qualified elector from any precinct in the county holding the election may vote;

(39) "Voter-verified paper audit trail" means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot that:

(A) Allows the voter to verify the voter-verified paper audit trail before the casting of the voter's ballot;

(B) Is not retained by the voter;

(C) Does not contain individual voter information;

(D) Is produced on paper that is sturdy, clean, and resistant to degradation; and

(E) Is readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic code;

(40) "Voting machine" means either:

(A) A direct-recording electronic voting machine that:

(i) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

- (ii) Processes the data by means of a computer program;
- (iii) Records voting data and ballot images in internal and external memory components; and

- (iv) Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or

(B) An electronic device for marking a paper ballot to be electronically scanned; and

(41) “Voting system” means:

(A) The total combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment that is used to:

- (i) Define ballots;

- (ii) Cast and count votes;

- (iii) Report or display election results; and

- (iv) Maintain and produce any audit trail information; and

(B) The practices and documentation used to:

- (i) Identify system components and versions of components;

- (ii) Test the system during its development and maintenance;

- (iii) Maintain records of system errors and defects;

- (iv) Determine specific system changes to be made to a system after the initial qualification of the system; and

- (v) Make available any materials to the voter, including without limitation notices, instructions, forms, or paper ballots.

History. Acts 1969, No. 465, Art. 1, § 1; 1971, No. 261, § 1; 1977, No. 888, § 3; A.S.A. 1947, § 3-101; Acts 1987, No. 123, § 12; 1991, No. 241, § 1; 1995, No. 946, § 1; 1995, No. 963, § 1; 1997, No. 445, § 1; 1997, No. 1082, § 1; 1999, No. 1342, § 1; 2003, No. 994, § 1; 2003, No. 1731, § 1; 2005, No. 2233, § 2; 2007, No. 224, § 1; 2007, No. 1020, § 1; 2009, No. 250, § 1; 2009, No. 659, § 5; 2009, No. 959, § 2; 2009, No. 1480, § 14; 2011, No. 203, § 1; 2013, No. 595, § 1; 2013, No. 724, § 3; 2013, No. 1110, § 1; 2013, No. 1126, § 1; 2013, No. 1211, § 1; 2013, No. 1297, § 1; 2013, No. 1389, § 1.

A.C.R.C. Notes. Acts 2013, No. 724, § 1, provided: “Legislative intent.

“(1) Article 5, § 9, of the Constitution of the State of Arkansas states that ‘[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.’

“(2) In interpreting that constitutional provision, the Supreme Court of Arkansas has ‘consistently recognized that a person

convicted of a felony or one of the specifically enumerated offenses is disqualified from holding public office under Article 5, Section 9, of the Arkansas Constitution.’ *State v. Oldner*, 361 Ark. 316, 206 S.W.3d 818 (2005). However, while the Court has expounded on what constitutes an ‘infamous crime’, such as when it spoke of an offense ‘indicative of great moral turpitude’, *State v. Irby*, 190 Ark. 786, 81 S.W.2d 419 (1935), it has not until very recently attempted to define the term.

“(3) In 2005, the Supreme Court determined that, aside from the specifically named crimes in Article 5, § 9, an ‘infamous crime’ involved dishonesty. *Oldner*, 361 Ark. at 327, 206 S.W.3d at 822. In 2010, the Supreme Court specifically held that theft constituted an ‘infamous crime’. *Edwards v. Campbell*, 2010 Ark. 398, 370 S.W.3d 250 (2010). This, however, is as specific as the Supreme Court has gotten, as it further noted that ‘a crime is not considered infamous based on the available punishment but rather is considered infamous based on the underlying nature of that crime.’ *Id.*

“(4) Because of the uncertainty associated with the term ‘infamous crime’, and in the interests of educating the general public and potential office holders about who is or is not eligible to hold public office in this state, it is the intent of the General Assembly to define the term ‘infamous crime’ for the purpose of assisting the judiciary in its further definitional refinements.”

Acts 2013, No. 724, § 2, provided: “Legislative findings.

“The General Assembly finds that:

“(1) Article 5, § 9, of the Constitution of the State of Arkansas states that ‘[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State’;

“(2) A definition of ‘infamous crime’ should also encompass those criminal offenses that lead to a loss of public confidence as well as offenses in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense that involves some element of deceitfulness, untruthfulness, or falsification; and

“(3) A reviewing court should also measure certain variables when determining what constitutes an ‘infamous crime’, such as the attendant mental state of the

offense, the particular circumstances surrounding the charged offense, the age and education of the person committing the offense, and, if the offense occurred before the person has assumed public office, the age of the person at the time of the conviction itself.”

Amendments. The 2013 amendment by No. 595 added the definition for “Proof of identity.”

The 2013 amendment by No. 724 added the definition for “Infamous crimes.”

The 2013 amendment by No. 1110 added definitions for “Nonpartisan candidate,” “Nonpartisan election,” and “Nonpartisan office.”

The 2013 amendment by No. 1126 substituted “Vacancy in office does” for “The phrase ‘vacancy’ shall” in present (37)(B).

The 2013 amendment by No. 1211 added the definition for “Precinct.”

The 2013 amendment by No. 1297 added the definition for “Electronic poll book.”

The 2013 amendment by No. 1389 added the definition for “Vote center.”

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

7-1-103. Miscellaneous misdemeanor offenses — Penalties.

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

(1) It shall be unlawful for any person to appoint or offer to appoint anyone to any office or position of trust or for any person to influence, attempt to influence, or offer to influence the appointment, nomination, or election of any person to office in consideration of the support or assistance of the person for any candidate in any election in this state;

(2)(A)(i) It shall be unlawful for any public servant, as defined in § 21-8-402, to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office.

(ii) Devoting any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office includes without limitation the gathering of signatures for a nominating petition.

(B) It shall be unlawful for any public servant, as defined in § 21-8-402, to circulate an initiative or referendum petition or to

solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas.

(C) It shall be unlawful for any public servant, as defined in § 21-8-402, to coerce, by threats or otherwise, any public employee into devoting time or labor toward the campaign of any candidate for office or for the nomination to any office;

(3)(A) It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.

(B) As used in subdivision (a)(3)(A) of this section, "campaign materials" and "campaign purposes" refer to:

(i) The campaign of a candidate for public office; and

(ii) Efforts to support or oppose a ballot measure, except as provided in § 7-1-111;

(4) It shall be unlawful for any person to assess any public employee, as defined in § 21-8-402, for any political purpose whatever or to coerce, by threats or otherwise, any public employee into making a subscription or contribution for any political purpose;

(5) It shall be unlawful for any person employed in any capacity in any department of the State of Arkansas to have membership in any political party or organization that advocates the overthrow of our constitutional form of government;

(6) It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality, county, or school district in the state;

(7)(A)(i) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement", "Paid Political Ad", or "Paid for by" the candidate, committee, or person who paid for the message.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(B)(i) All articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words:

(a) "Paid political advertisement" or "paid political ad"; or

(b) "Paid for by", "sponsored by", or "furnished by" the true sponsor of the advertisement.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer;

(8) [Repealed.]

(9)(A) No election official acting in his or her official capacity shall do any electioneering on any election day or any day on which early voting is allowed. Except as provided in subdivisions (a)(9)(B) and (C) of this section, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place on election day.

(B) During early voting days, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever during early voting hours in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the early voting site nor engage in those activities with persons standing in line to vote whether within or without the courthouse.

(C) When the early voting occurs at a facility other than the county clerk's office, no person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever in the building or within one hundred feet (100') of the primary exterior entrance used by voters to the building containing the polling place;

(10) No election official shall perform any of the duties of the position before taking and subscribing to the oath provided for in § 7-4-110;

(11) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;

(12) No person shall willfully cause or attempt to cause his or her own name to be registered in any other election precinct than that in which he or she is or will be before the next ensuing election qualified as an elector;

(13) During any election, no person shall remove, tear down, or destroy any booths or supplies or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his or her ballot;

(14) No person shall take or carry any ballot obtained from any election official outside of the polling room or have in his or her

possession outside of the polling room before the closing of the polls any ballot provided by any county election commissioner;

(15) No person shall furnish a ballot to any elector who cannot read informing him or her that it contains a name or names different from those that are written or printed thereon or shall change or mark the ballot of any elector who cannot read so as to prevent the elector from voting for any candidate, act, section, or constitutional amendment as the elector intended;

(16) No election official or other person shall unfold a ballot or without the express consent of the voter ascertain or attempt to ascertain any vote on a ballot before it is placed in the ballot box;

(17) No person shall print or cause to be printed any ballot for any election held under this act with the names of the candidates appearing thereon in any other or different order or manner than provided by this act;

(18) No election official shall permit the vote of any person to be cast in any election precinct in this state in any election legally held in this state when the person does not appear in person at the election precinct and actually cast the vote. This subdivision (a)(18) shall not apply to persons entitled to cast absentee ballots;

(19)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(20) No person shall:

(A) Vote, knowing himself or herself not to be entitled to vote;

(B) Vote more than once at any election or knowingly cast more than one (1) ballot or attempt to do so;

(C) Provide assistance to a voter in marking and casting the voter's ballot except as provided in § 7-5-310;

(D) Alter or attempt to alter any ballot after it has been cast;

(E) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(F) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots; or

(G) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

(21) No person shall make any bet or wager upon the result of any election in this state;

(22) No election official, poll watcher, or any other person in or out of this state in any primary, general, or special election in this state shall

divulge to any person the results of any votes cast for any candidate or on any issue in the election until after the closing of the polls on the day of the election. The provisions of this subdivision (a)(22) shall not apply to any township or precinct in this state in which all of the registered voters therein have voted prior to the closing of the polls in those instances in which there are fifteen (15) or fewer registered voters in the precinct or township; and

(23) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section.

(b)(1) Except as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he or she shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

History. Acts 1969, No. 465, Art. 11, § 4; 1970 (Ex. Sess.), No. 3, § 1; 1971, No. 261, § 24; 1981, No. 327, § 1; A.S.A. 1947, § 3-1104; Acts 1987, No. 395, § 1; 1989, No. 505, § 2; 1991, No. 241, § 2; 1991, No. 786, § 4; 1995, No. 497, § 1; 1995, No. 1085, § 1; 1997, No. 445, § 2; 1997, No. 1121, § 1; 1999, No. 553, § 1; 1999, No. 1525, § 1; 2001, No. 795, § 1; 2001, No. 926, § 1; 2001, No. 1839, § 1; 2005, No. 1284, § 1; 2007, No. 221, § 1; 2009, No. 310, § 1; 2009, No. 473, § 1; 2009, No. 658, § 1; 2011, No. 721, § 1; 2013, No. 312, § 1.

Amendments. The 2013 amendment rewrote (a)(3)(B).

7-1-111. Use of public funds to support or oppose ballot measure.

(a) As used in this section:

(1) “Governmental body” means the same as defined in § 21-8-402;

(2) “Public funds” means funds, moneys, receivables, grants, investments, instruments, real or personal property, or other assets, liabilities, equities, revenues, receipts, or disbursements belonging to, held by, or passed through a governmental body; and

(3)(A) Except as provided in subdivision (a)(3)(B) of this section, “public servant” means an individual who is:

(i) Employed by a governmental body;

(ii) Appointed to serve a governmental body; or

(iii) Appointed to a governmental body.

(B) “Public servant” does not include:

(i) An elected official; or

(ii) A person appointed to an elective office.

(b) It is unlawful for a public servant or a governmental body to expend or permit the expenditure of public funds to support or oppose a ballot measure.

(c) This section does not:

(1) Limit the freedom of speech of a public servant or government body, including without limitation verbal expressions of views supporting or opposing a ballot measure;

(2) Prohibit a governmental body from expressing an opinion on a ballot measure through the passage of a resolution or proclamation;

(3) Prohibit the incidental use of state resources by a public servant, including without limitation travel costs, when speaking at an event in which a ballot measure is discussed if the subject matter of the speaking engagement is within the scope of the official duties and responsibilities of the public servant; or

(4) Prohibit the dissemination of public information at a speaking engagement and the incidental use of state resources in the analysis and preparation of that public information if the subject matter of the public information is within the scope of the official duties and responsibilities of the public servant.

(d)(1) Except as provided under subdivision (d)(2) of this section, a violation of this section is a Class A misdemeanor.

(2)(A) A public servant who is found guilty or pleads guilty or nolo contendere to a violation under this section is ineligible to hold any office, employment, or appointment in a governmental body.

(B) If a public servant is found guilty or pleads guilty or nolo contendere to a violation under this section while employed by a governmental body, he or she shall be removed from employment immediately.

History. Acts 2013, No. 312, § 2.

7-1-112. Destruction of a ballot or ballot materials — Prohibited.

(a) A person shall not knowingly destroy a ballot or ballot-related material required to be preserved by law until after:

(1) Two (2) years after the certification of the results of the election; and

(2) The county board of election commissioners has entered an order, created a record to be maintained, and filed the order for destruction of the ballot or ballot-related material.

(b)(1) As used in this section, “ballot or ballot-related material” means a ballot or other form that is:

(A) Provided to a person representing himself or herself as the voter or his or her agent by a county clerk, member of a county board of election commissioners, or poll worker; and

- (B) Returned by the person representing himself or herself as a voter or his or her agent for the purpose of voting in an election.
- (2) "Ballot or ballot-related material" includes without limitation:
- (A) A ballot that has been completed, cast, abandoned, or spoiled;
 - (B) A ballot stub or certificate from a ballot that has been completed, cast, abandoned, or spoiled;
 - (C) A voter statement that has been submitted to the county clerk;
 - (D) An envelope that contains a ballot;
 - (E) An affidavit provided to the county clerk;
 - (F) An absentee ballot list maintained under § 7-5-416;
 - (G) An absentee ballot application; and
 - (H) A list of applications for an absentee ballot under § 7-5-408.
- (c) A person who is convicted under this section is guilty of an unclassified felony and shall:
- (1) Be sentenced to a term of no less than one (1) year and no more than six (6) years; and
 - (2) Pay a fine of up to ten thousand dollars (\$10,000).

History. Acts 2013, No. 1261, § 1.

7-1-113. Vote centers.

(a)(1) The county clerk or county board of election commissioners may establish one (1) or more vote centers in the county on election day under § 7-5-101.

(2) A vote center shall be available to any qualified elector registered to vote in the county who applies to the county clerk or county board of election commissioners while the polls are open on election day.

(b) If a vote center is used in an election, the vote center shall have a secure electronic connection to provide voting information to and receive voting information from a computerized registration book maintained by the county clerk.

(c) Before a person is permitted to cast a vote at a vote center, the county clerk or election official shall:

(1) Request that the voter identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration and provide identification as required by law;

(2) Request that the voter provide identification as required by law;

(3) If the voter's name or address is not the same as that in the county voter registration record files, request that the voter complete an updated voter registration application form; and

(4)(A) Request that the voter sign a voting roster or voting request form that identifies his or her name, address, date of birth, and the date on the roster or form.

(B) The voting roster or voting request form shall contain the written or printed precinct number or ballot style of the voter.

(d) If the voter is not listed in the electronic county voter registration files, the county clerk or election official is unable to verify the voter's registration, and the voter contends that he or she is eligible to vote, the

voter shall be directed to his or her polling site for the voter's precinct to cast a ballot.

(e) The county clerk or county board of election commissioners shall furnish a vote center location that adequately allows the voter to personally and secretly execute his or her vote.

(f) The Secretary of State shall promulgate rules for the vote centers that:

(1) Designate the electronic equipment to be used to verify the registration record of a voter;

(2) Establish standards for the maintenance and use of the equipment used at a vote center;

(3) Establish standards for the testing and backup of the equipment used at a vote center;

(4) Establish standards for a secure electronic connection between a vote center and a county's computerized registration book; and

(5) Establish procedures for the conduct of the vote center in the event that the electronic system fails.

History. Acts 2013, No. 1389, § 2.

CHAPTER 3

POLITICAL PARTIES

SECTION.

7-3-108. Subversive parties — New par-

ties — Affidavit required
— Penalty.

7-3-108. Subversive parties — New parties — Affidavit required — Penalty.

(a) A political party shall not be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election in this state that:

(1) Either directly or indirectly advocates, teaches, justifies, aids, or abets the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state, or an act of terrorism as described by § 5-54-205; or

(2) Directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government of the United States or this state.

(b)(1) A newly organized political party shall not be recognized, qualified to participate, or permitted to have the names of its candidates printed on the ballot in any election in this state until it has filed an affidavit, by the officers of the party in this state under oath, that:

(A) It does not either directly or indirectly advocate, teach, justify, aid, or abet the overthrow by force or violence or by any unlawful means of the government of the United States or this state, or an act of terrorism as described by § 5-54-205; or

(B) It does not directly or indirectly carry on, advocate, teach, justify, aid, or abet a program of sabotage, force and violence,

sedition, or treason against the government of the United States or this state.

(2) The affidavit shall be filed with the Secretary of State.

(c) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.

History. Acts 1969, No. 465, Art. 11, § 7; A.S.A. 1947, § 3-1107; Acts 1997, No. 444, § 4; 2001, No. 1553, § 18; 2005, No. 1994, § 484; 2013, No. 1126, § 2.

in (a) and (b)(1), substituted “A” for “No” and inserted “not”; and substituted “described” for “defined” in (a)(1) and (b)(1)(A).

Amendments. The 2013 amendment,

CHAPTER 4

BOARDS OF ELECTION COMMISSIONERS AND OTHER ELECTION OFFICERS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.
- 7-4-103. Vacancy or disqualification of state or county chair.
- 7-4-107. Duties of county board of election commissioners — Ballot boxes — Voting booths — Appointment of election officers.

SECTION.

- 7-4-109. Qualifications of state and county commissioners, election officials, poll workers, and certified election monitors.
- 7-4-116. Election poll workers program for high school students.
- 7-4-118. Complaints of election law violations.
- 7-4-119. Disclosure required.

7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.

(a) The State Board of Election Commissioners shall be composed of the following seven (7) persons, with at least one (1) from each congressional district:

- (1) The Secretary of State;
- (2) One (1) person designated by the chair of the state Democratic Party;
- (3) One (1) person designated by the chair of the state Republican Party;
- (4) One (1) person to be chosen by the President Pro Tempore of the Senate;
- (5) One (1) person to be chosen by the Speaker of the House of Representatives; and
- (6) Two (2) persons to be chosen by the Governor, one (1) of whom shall be a county clerk and one (1) of whom shall have served for at least three (3) years as a county election commissioner.

(b) The Secretary of State shall serve as chair and secretary of the board.

(c) Except for the Secretary of State and the county clerk, no member of the board shall be an elected public official.

(d)(1) The term on the board of the Secretary of State shall be concurrent with his or her term in office.

(2) The county clerk shall hold the office of county clerk when appointed to the board and shall be removed as a member of the board if not in office.

(3)(A) Members of the board appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be appointed for terms of two (2) years and shall continue to serve until successors have been appointed and taken the official oath.

(B) All other appointive members shall be appointed for terms of four (4) years and shall continue to serve until successors have been appointed and taken the official oath.

(4) No appointive member shall be appointed to serve more than two (2) consecutive full terms.

(5)(A) If a vacancy on the board occurs, a successor shall be appointed within thirty (30) days to serve the remainder of the unexpired term.

(B) The appointment shall be made by the official holding the office responsible for appointing the predecessor.

(e)(1) The board shall meet as needed upon call of the chair or upon written request to the chair of any four (4) members.

(2) A majority of the membership of the board shall constitute a quorum for conducting business.

(3) No sanctions shall be imposed without the affirmative vote of at least four (4) members of the board.

(4) A meeting of the board may be chaired and conducted by:

(A) The chair of the board; or

(B)(i) A person designated by the chair of the board to act as chair for the meeting.

(ii) If a person is designated by the chair under subdivision (e)(4)(B)(i) of this section:

(a) The designated person's presence shall count for a quorum to conduct business; and

(b) The designated person may vote in the meeting.

(f) The board shall have the authority to:

(1) Publish a candidate's election handbook, in conjunction with the office of the Secretary of State and the Arkansas Ethics Commission, which outlines in a readable and understandable format the legal obligations of a candidate and any other suggestions that might be helpful to a candidate in complying with state election law;

(2) Conduct statewide training for election officers and county election commissioners;

(3) Adopt all necessary rules regarding training referred to in subdivision (f)(2) of this section and develop procedures for monitoring attendance;

- (4) Monitor all election law-related legislation;
- (5) Formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures;
- (6)(A) Appoint at least one (1) certified election monitor to a county upon a signed, written request under oath filed with the board and a determination by the board that appointing a monitor is necessary.
- (B) The board shall certify at least one (1) election monitor in each congressional district.
- (C) Certified election monitors shall serve as observers for the purpose of reporting to the board on the conduct of the election.
- (D) The board may allow for reasonable compensation for election monitors;
- (7) Assist the county board of election commissioners in the performance of administrative duties of the election process if the board determines that assistance is necessary and appropriate;
- (8)(A) Formulate, adopt, and promulgate all necessary rules to establish uniform and nondiscriminatory administrative complaint procedures consistent with the requirements of Title IV of the federal Help America Vote Act.
- (B) The cost of compliance with Title IV of the federal Help America Vote Act shall be paid from the fund established to comply with the federal Help America Vote Act;
- (9) Investigate alleged violations, render findings, and impose disciplinary action according to § 7-4-118 for violations of election and voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and except for any matters relating to campaign finance and disclosure laws which the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218;
- (10) Examine and approve in accordance with §§ 7-5-503 and 7-5-606 the types of voting machines and electronic vote tabulating devices used in any election; and
- (11) Administer reimbursement of election expenses to counties in accordance with § 7-7-201(a) for primary elections, statewide special elections, and nonpartisan general elections.
- (g) The Attorney General shall provide legal assistance to the board in answering questions regarding election laws.
- (h)(1) The board may appoint a Director of the State Board of Election Commissioners, who may hire a staff.
- (2) The director shall serve at the pleasure of the board.
- (3) The board shall set the personnel policies in accordance with the Regular Salary Procedures and Restrictions Act, § 21-5-101 et seq., and the Uniform Classification and Compensation Act, § 21-5-201 et seq.

History. Acts 1969, No. 465, Art. 5, §§ 2, 3; 1977, No. 783, § 1; A.S.A. 1947, §§ 3-502, 3-503; Acts 1993, No. 1092, § 1; 1995, No. 349, § 3; 1995, No. 352, § 3; 1995, No. 741, § 1; 1995, No. 929, § 1; 1995, No. 940, § 1; 1995, No. 1217, § 5; 1997, No. 647, § 1; 1999, No. 997, § 1; 2001, No. 1174, § 1; 2003, No. 994, § 14; 2003, No. 1161, § 1; 2005, No. 1827, § 1; 2007, No. 559, § 1; 2009, No. 250, § 2;

2013, No. 977, § 1; 2013, No. 1110, § 2; 2013, No. 1456, § 1.

A.C.R.C. Notes. Acts 2012, No. 54, § 7, provided: "TRANSFER OF FUNDS. If the State Board of Election Commissioners is required to pay the expenses for any state supported preferential primary election, general primary election, nonpartisan judicial general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board of Election Commissioners shall certify to the Chief Fiscal Officer of the State the amount needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to the Budget Stabilization Trust Fund at the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect from July 1, 2012 through June 30, 2013."

Acts 2013, No. 166, § 7, provided: "TRANSFER OF FUNDS. If the State Board of Election Commissioners is re-

quired to pay the expenses for any state supported preferential primary election, general primary election, nonpartisan judicial general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board of Election Commissioners shall certify to the Chief Fiscal Officer of the State the amount needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to the Budget Stabilization Trust Fund at the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect from July 1, 2013 through June 30, 2014."

Amendments. The 2013 amendment by No. 977 rewrote (e)(4).

The 2013 amendment by No. 1110 deleted "judicial" following "nonpartisan" in (f)(11).

The 2013 amendment by No. 1456 inserted "at least one (1)" in (f)(6)(A); and inserted (f)(6)(B) and redesignated the remaining subdivisions accordingly.

7-4-103. Vacancy or disqualification of state or county chair.

In the event of a vacancy or disqualification on the part of any state or county chair for either the majority party or a minority party, the state vice chair or county vice chair of the party in which the vacancy occurs shall act as county chair or state chair, as the case may be, for all of the purposes set out in § 7-4-101 and this section until a new county chair or state chair is selected by the parties.

History. Acts 1969, No. 465, Art. 5, §§ 2, 5; A.S.A. 1947, §§ 3-502, 3-505; Acts 1987, No. 248, § 6; 1995, No. 1014, § 2; 2001, No. 794, § 1; 2011, No. 1056, § 2; 2013, No. 1154, § 1.

Amendments. The 2013 amendment deleted (b).

7-4-107. Duties of county board of election commissioners — Ballot boxes — Voting booths — Appointment of election officers.

(a) The county board of election commissioners shall proceed to establish and allocate a sufficient number of ballot boxes in each precinct or polling site. The county board shall appoint the requisite number of election officials at each site where voters present themselves to vote to ensure that there is a sufficient number of election officials at each site, based upon the votes in the immediately preceding comparable election.

(b)(1) It shall be the duty of the county board to select and appoint a sufficient number of election officials for each polling site as provided by subsection (a) of this section and to perform the other duties prescribed not less than twenty (20) days preceding an election.

(2) Each polling site shall have a minimum of two (2) election clerks, one (1) election judge, and one (1) election sheriff. For a regularly scheduled election, all election officials at a polling site shall have completed training under § 7-4-109, and at least one (1) election official at a polling site shall have attended election training coordinated by the State Board of Election Commissioners within twelve (12) months prior to the election. The minority party election commissioner shall have the option to designate a number of election officials equal to one (1) less than the majority of election officials at each polling site, with a minimum of two (2) election officials at each polling site. In the event that the county party representatives on the county board fail to agree upon any election official to fill an election post allotted to the respective party twenty (20) days before the election, the county board shall appoint the remaining election officials.

(c) The county board shall certify to the county court the per diem of election officials and the mileage of the election official carrying the returns to the county election commissioners' office for allowance.

(d) The county board may permit election officials to work half-day or split shifts at the polls at any election so long as the requisite number of election officials is always present.

History. Acts 1969, No. 465, Art. 5, § 6 and Art. 7, § 3; 1971, No. 261, § 9; 1973, No. 157, § 6; A.S.A. 1947, §§ 3-506, 3-703; Acts 1993, No. 511, §§ 1, 2; 1997, No. 647, § 5; 1999, No. 1490, § 2; 2001, No. 562, § 1; 2001, No. 1822, § 2; 2005, No. 894, § 1; 2005, No. 1827, § 2; 2007, No. 222, § 3; 2007, No. 559, § 3; 2013, No. 1457, § 1.

Amendments. The 2013 amendment inserted "all election officials at a polling site shall have completed training under § 7-4-109, and" in (b)(2).

7-4-109. Qualifications of state and county commissioners, election officials, poll workers, and certified election monitors.

(a)(1) A member of the State Board of Election Commissioners, a county election commissioner, and an election official shall be a quali-

fied elector of this state, able to read and write the English language, and shall not have been found guilty or pleaded guilty or nolo contendere to the violation of an election law of this state.

(2) An election official, as defined in § 7-1-101, shall not be a candidate for an office to be filled at an election while serving as an election official.

(3) A member of the county board of election commissioners shall not be disqualified from serving as a member of the county board by the appearance on the ballot as a candidate for a position in his or her political party.

(b)(1) A member of a county board shall be a resident of the county in which he or she serves at the time of his or her appointment or election.

(2)(A) An election official shall be a resident of the precinct in which he or she serves at the time of his or her appointment.

(B) However, if at the time of posting election officials the county board votes unanimously and certifies to the county clerk that it is impossible to obtain a qualified election official from any precinct in the county, another qualified citizen of the county may be designated to serve in the precinct.

(c)(1) A person who is a paid employee of a political party or of a candidate for office on that county's ballot shall not be a member of a county board or an election official.

(2)(A) Except as provided in subdivision (c)(2)(B) of this section, a person serving on the county board shall not participate in the campaign of a candidate listed on that county's ballot or of a write-in candidate seeking election in that county.

(B) A member of the county board may make a financial contribution to a candidate.

(3) A person employed with a company that has a business dealing, contract, or pending contract with a county board to which he or she seeks appointment shall not be a candidate for the county board.

(d) A person shall not serve as an election official if:

(1) The person is married to or related within the second degree of consanguinity to a candidate running for office in the election; and

(2) Another person makes an objection to his or her service to the county board within ten (10) calendar days after posting the list of officials.

(e)(1) Prior to the regularly scheduled preferential primary election, each member of the county board of election commissioners, poll worker, and certified election monitor shall attend election training coordinated by the state board.

(2) The state board shall determine the method and amount of compensation for attending the training.

History. Acts 1969, No. 465, Art. 5, § 4, and Art. 13, § 5; 1971, No. 451, § 2; 1972 (Ex. Sess.), No. 41, § 2; A.S.A. 1947, §§ 3-504, 3-1305; Acts 1987, No. 248, § 5; 1993, No. 715, §§ 1, 2; 1997, No. 647, § 7; 2001,

No. 796, § 1; 2001, No. 1822, § 1; 2005, No. 894, § 1; 2005, No. 1827, § 3; 2007, No. 489, § 2; 2013, No. 1457, § 2.

Amendments. The 2013 amendment, in the section heading, deleted "and other"

following "commissioners" and added "poll workers, and certified election monitors"; substituted "a" for "the members of each" in (a)(1); substituted "he or she serves" for "they serve" in (b)(1) and (b)(2)(A); substituted "his or her" for "their" in (b)(2)(A); in (b)(2)(B), substituted "votes unanimously and certifies to the county clerk" for "by unanimous vote shall find"; "in the county, another" for "or precincts and the county

board shall make certification of that finding to the county clerk, then other"; in (c)(1), substituted "a candidate" for "any person running a" and "not" for "be eligible to"; rewrote (c)(2)(A), (c)(2)(B), (c)(3), and (d); and substituted "poll worker, and certified election monitor" for "for each county and at least two (2) election officials per polling site designated by the county board for each county" in (e)(1).

7-4-116. Election poll workers program for high school students.

(a)(1) The county board of election commissioners may conduct a special election day program for high school students in one (1) or more polling places designated by the county board.

(2) The high school students shall be selected by the county board in cooperation with the local high school principal, the local 4-H club, the local Boy Scout club, the local Girl Scout club, or any other local organization for youth designated by the county board.

(3)(A) A high school student selected for this program who has not reached his or her eighteenth birthday by the election day in which he or she is participating shall be called an election page.

(B) A high school student selected for this program who has reached his or her eighteenth birthday by the election day in which he or she is participating and meets the qualifications in § 7-4-109 may be an election official.

(b) The program shall:

(1) Be designed to stimulate the students' interest in elections and registering to vote;

(2) Provide assistance to the officers of election; and

(3) Assist in the safe entry and exit of elderly voters and voters with disabilities from the polling place.

(c)(1) Each student selected as an election page shall:

(A) Be granted an additional excused absence from school while working as an election page;

(B) Serve under the direct supervision of the election officials at his or her assigned polling place; and

(C) Observe strict impartiality at all times.

(2) An election page may observe the electoral process and seek information from the election officers but shall not handle or touch ballots, voting machines, or any other official election materials or enter any voting booth.

(3) An election page shall be in a volunteer position and shall not receive any compensation for performing his or her duties.

(4) Before beginning any duties, an election page shall take, before an election official, the following oath:

"I, _____, do swear that I will perform the duties of an election page of this election according to law and to the best of my abilities, and that I

will studiously endeavor to prevent fraud, deceit, and abuse, and that I will not disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election.”

(d)(1) Each student selected to be an election official shall:

(A) Take the oath of the election officials in § 7-4-110;

(B) Serve under the supervision of the appropriate county board of election commissioners;

(C) Observe strict impartiality at all times; and

(D) Be granted an additional excused absence from school while working as an election official.

(2) A high school student selected to be an election official may be compensated according to § 7-4-112 if the county board of election commissioners determines that the high school students selected to be election officials should be compensated.

History. Acts 2003, No. 242, § 1; 2005, No. 67, § 3; 2011, No. 1223, §§ 6, 7; 2013, No. 1322, §§ 5, 6.

Amendments. The 2013 amendment inserted “excused” preceding “absence” in (c)(1)(A) and (d)(1)(D).

7-4-118. Complaints of election law violations.

(a)(1) The State Board of Election Commissioners may investigate alleged violations, render findings, and impose disciplinary action according to this subchapter for violations of election and voter registration laws, except:

(A) For the provisions in § 7-1-103(a)(1)-(4), (6), and (7); and

(B) For any matters relating to campaign finance and disclosure laws that the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218.

(2) For purposes of subdivision (a)(1) of this section, the board may file a complaint.

(3) A complaint must be filed with the board in writing within thirty (30) days of an alleged voter registration violation or the election associated with the complaint.

(4) A complaint must clearly state the alleged election irregularity or illegality, when and where the alleged activity occurred, the supporting facts surrounding the allegations, and the desired resolution.

(5) A complaint must be signed by the complainant under penalty of perjury.

(6)(A) Filing a frivolous complaint is considered a violation of this subchapter.

(B) For purposes of this section, “frivolous” means clearly lacking any basis in fact or law.

(b)(1) Upon receipt by the board of a written complaint signed under penalty of perjury stating facts constituting an alleged violation of election or voter registration laws under its jurisdiction, the board shall proceed to investigate the alleged violation.

(2) The board may determine that:

- (A) The complaint can be disposed of through documentary submissions; or
- (B) Further investigation is necessary.
- (3) The board may forward the complaint, along with the information and documentation as deemed appropriate, to the proper authority.
- (4)(A) If the board determines that an investigation is necessary, the board shall provide a copy of the complaint with instructions regarding the opportunity to respond to the complaint to the party against whom the complaint is lodged.
- (B) The board may administer oaths for the purpose of taking sworn statements from any person thought to have knowledge of any facts pertaining to the complaint.
- (C) The board may request the party against whom the complaint is lodged to answer allegations in writing, produce relevant evidence, or appear in person before the board.
- (D) The board may subpoena any person or the books, records, or other documents relevant to an inquiry by the board that are being held by any person and take sworn statements.
- (E) The board shall provide the subject of the subpoena with reasonable notice of the subpoena and an opportunity to respond.
- (F) The board shall advise in writing the complainant and the party against whom the complaint is lodged of the final action taken.
- (c) If the board finds that probable cause exists for finding a violation of election or voter registration laws under its jurisdiction, the board may determine that a full public hearing be called.
- (d) If the board finds a violation of election or voter registration laws under its jurisdiction, then the board may do one (1) or more of the following:
- (1) Issue a public letter of caution, warning, or reprimand;
 - (2) Impose a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) for each negligent or intentional violation;
 - (3) Report its findings, along with the information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities; or
 - (4) Assess costs for the investigation and hearing.
- (e)(1) The board shall adopt rules governing the imposition of the fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (2)(A) The board may file suit in the Pulaski County Circuit Court or in the circuit court of the county in which the debtor resides or in the small claims division of any district court in the State of Arkansas to obtain a judgment for the amount of any fine imposed according to its authority.
- (B) The action by the court shall not involve further judicial review of the board's actions.
- (C) The fee normally charged for the filing of a suit in any of the circuit or district courts in the State of Arkansas shall be waived on behalf of the board.

(3) All moneys received by the board in payment of fines shall be deposited into the State Treasury as general revenues.

(f)(1) The board shall complete its investigation of a complaint filed according to this section and take final action within one hundred eighty (180) days of the filing of the complaint.

(2) However, if a hearing under subsection (c) of this section is conducted, all action on the complaint by the board shall be completed within two hundred forty (240) days.

(3) Any final action of the board under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

(g)(1) The board shall keep a record of all inquiries, investigations, and proceedings.

(2) Records relating to investigations by the board are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., until a hearing is set or the investigation by the Director of the Board of Election Commissioners is closed.

(3) The board may disclose, through its members or staff, otherwise confidential information to proper law enforcement officials, agencies, and bodies as may be required to conduct its investigation.

History. Acts 2003, No. 1161, § 2; 2007, No. 559, § 4; 2013, No. 1126, § 3.

Amendments. The 2013 amendment deleted “according to the Small Claims

Procedure Act, § 16-17-601 et seq. [repealed]” following “debtor resides or” in (e)(2)(A).

7-4-119. Disclosure required.

(a) A member of a county board of election commissioners shall report to the Secretary of State by January 31 of each calendar year any goods or services sold during the previous calendar year by himself or herself, his or her spouse, or any business in which the member or his or her spouse is an officer, director, or stockholder owning more than ten percent (10%) of the stock having a total annual value in excess of one thousand dollars (\$1,000) to an office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of:

- (1) The State of Arkansas;
- (2) A county;
- (3) A municipality; and
- (4) A school district.

(b) The Secretary of State shall provide by rule for:

- (1) A form for the report; and
- (2) A procedure for the disclosure.

History. Acts 2011, No. 1216, § 1; 2013, No. 443, § 1.

A.C.R.C. Notes. Acts 2013, No. 443, § 2, provided: “Reports to be submitted to the Secretary of State under this act for the calendar year ending December 31,

2012, shall be due by September 1, 2013.”

Amendments. The 2013 amendment inserted “by January 31 of each calendar year” in the introductory language of (a); and added (b).

CHAPTER 5

ELECTION PROCEDURE GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PREELECTION PROCEEDINGS.
3. CONDUCT OF ELECTIONS.
4. ABSENTEE VOTING.
5. VOTING MACHINES.
7. RETURNS AND CANVASS.
8. ELECTION CONTESTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 7-5-101. Precinct boundaries, polling sites, and vote centers — Establishment and alteration.
- 7-5-102. Time of general election.
- 7-5-107. Use of voter registration lists by poll workers.

SECTION.

- 7-5-109. Computerized voter registration lists.
- 7-5-111. Candidacy for more than one (1) elected office — Limitations.

7-5-101. Precinct boundaries, polling sites, and vote centers — Establishment and alteration.

(a)(1) The county board of election commissioners shall:

(A) Establish election precincts; and

(B)(i) Designate a polling site for each precinct.

(ii) A polling site may serve two (2) or more precincts, including parts of precincts.

(2) Except as provided in § 6-14-106, the designation of polling sites shall be by a unanimous vote of the members of the county board present.

(b)(1) The county board by order may alter the boundaries of existing election precincts and establish new ones.

(2) A precinct shall not be altered and a new precinct shall not be created less than sixty (60) days before an election except in the event of an emergency as determined by unanimous vote of the county board of election commissioners.

(3)(A) Except as provided in subdivision (b)(3)(B) of this section, if more than three thousand (3,000) voters are registered in a precinct, the county board of election commissioners shall redistrict the precinct at least one hundred twenty (120) days before the election.

(B) If the number of registered voters in the precinct exceeds three thousand (3,000) registered voters during or after the one hundred twenty (120) days before an election, the county board of election commissioners shall redistrict the precinct at least one hundred twenty (120) days before the next election.

(4)(A) An order to alter the boundaries of any precinct or establish any new one shall not be effective until it has been filed with the county clerk.

(B) The order shall contain :

(i) A written description of the boundaries of the precinct;

(ii) A printed map of the boundaries of the precincts altered or established; and

(iii) A digital map detailing the precinct boundaries altered or established in a format prescribed by the Arkansas Geographic Information Office.

(c)(1) Within thirty (30) days after the boundaries of an election precinct are altered or a new election precinct is established, the county clerk shall submit written, printed, and digital copies of the map and boundaries required under subdivision (b)(4) of this section to the:

(A) Secretary of State; and

(B) Arkansas Geographical Information Office.

(2) Upon receipt of the changes, the Secretary of State immediately shall forward a copy to the:

(A) Office of the Attorney General;

(B) Census State Data Center;

(C) Mapping and Graphics Section of the Planning and Research Division of the Arkansas State Highway and Transportation Department; and

(D) Arkansas Geographic Information Office.

(3) The Secretary of State may:

(A) Designate each precinct in the state with a unique alphanumeric description that clearly references:

(i) The precinct designation assigned by the county board of election commissioners; and

(ii) The county in which the precinct exists;

(B) Create a map of the State of Arkansas that is divided by precinct; and

(C) Display the map with the alphanumeric precinct designations on the Secretary of State's Internet website.

(d)(1) Except for school elections under § 6-14-106, the polling sites for each election shall be the same as those established for the immediately preceding general election unless changed by order of the county board.

(2) The county board shall not change a polling site for any precinct less than thirty (30) days before an election, except in the event of an emergency.

(3)(A) Notice of a change made in a polling site shall be provided by posting information at the polling site used in the last election and by the county clerk mailing notice to affected registered voters at least fifteen (15) days before the election unless:

(i) The election is a school election;

(ii) The election is a special election; or

(iii) The change in polling sites is due to an emergency arising less than fifteen (15) days before the election.

(B) If the change in polling site occurs in a school election, special election, or due to an emergency arising less than fifteen (15) days before the election, notice of a change made in the polling site shall be provided by posting information at the polling site used in the last election.

(e)(1)(A) Before establishing one (1) or more vote centers in the county under § 7-1-111, the county clerk shall certify to the Secretary of State and the county quorum court that the county has a secure electronic connection sufficient to prevent:

- (i) An elector from voting more than once; and
- (ii) Unauthorized access to a computerized registration book maintained by the county clerk.

(B) If the county clerk has certified to the county quorum court a determination of sufficiency under subdivision (e)(1)(A) of this section, the county may adopt an ordinance to establish vote centers for elections.

(C) The ordinance:

(i) Shall be filed with the county clerk, the county board of election commissioners, and the Secretary of State; and

(ii) Is effective when it is filed with the county clerk, the county board of election commissioners, and the Secretary of State.

(2)(A) Except for school elections under § 6-14-106, a vote center location for each election shall be the same as that established for the immediately preceding general election unless changed by order of the county clerk or county board of election commissioners.

(B) The county clerk or county board of election commissioners shall not change a vote center location for any precinct less than thirty (30) days before an election except in the event of an emergency.

(C) Notice of a change made to a vote center location shall be posted at the vote center location used in the last election, and except for school elections and special elections, the notice shall be published in a newspaper of general circulation in the county at least fifteen (15) days before the election.

History. Acts 1969, No. 465, Art. 6, § 1; A.S.A. 1947, § 3-601; Acts 1993, No. 717, §§ 1, 3; 1995, No. 876, § 1; 1995 (1st Ex. Sess.), No. 7, § 1; 1997, No. 451, § 1; 1999, No. 455, § 1; 2003, No. 1165, § 2; 2003, No. 1295, § 2; 2007, No. 694, § 1; 2009, No. 250, § 3; 2009, No. 1480, § 15; 2013, No. 546, § 1; 2013, No. 1126, § 4; 2013, No. 1211, § 2; 2013, No. 1389, § 3.

Amendments. The 2013 amendment by No. 546 rewrote (d)(3).

The 2013 amendment by No. 1126 substituted "Mapping and Graphics Section of the Planning and Research Division" for "Cartography Section" in (c)(2)(C).

The 2013 amendment by No. 1211 rewrote (a), (b) and (c).

The 2013 amendment by No. 1389 added (e).

7-5-102. Time of general election.

On the Tuesday next after the first Monday in November in every even-numbered year, there shall be held an election in each precinct and ward in this state for the election of:

(1) All elective state, county, and township officers whose term of office is fixed at two (2) years by the Arkansas Constitution or the General Assembly;

(2) State senators in their respective districts when the terms for which the state senators have been elected expire before the next general election;

(3) Members of the United States House of Representatives for each congressional district in this state; and

(4) United States Senators when the term of office of any United States Senator expires before the next general election.

History. Acts 1969, No. 465, Art. 6, § 2; A.S.A. 1947, § 3-602; Acts 1993, No. 512, § 1; 2005, No. 67, § 5; 2013, No. 1110, § 3.

Amendments. The 2013 amendment rewrote the section.

7-5-106. Runoff elections for county and municipal officers.**RESEARCH REFERENCES**

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

7-5-107. Use of voter registration lists by poll workers.

(a)(1) In any election conducted in this state, precinct voter registration lists shall be used by poll workers in each polling place.

(2)(A) An electronic poll book may be used by poll workers in each polling place.

(B) The functions of an electronic poll book may include without limitation:

(i) Voter lookup;

(ii) Voter verification;

(iii) Voter identification;

(iv) Precinct assignment;

(v) Ballot assignment;

(vi) Recording when a voter presents himself or herself to an election official and requests a ballot; and

(vii) Redirecting voters to the correct polling site.

(b) Precinct voter registration lists shall contain the name, address including zip code, and date of birth of each registered voter within the precinct, including those who have been designated inactive, the precinct number and county wherein the precinct is located, the name and date of the election, and a space for the voter's signature.

(c) The following shall be printed at the top of each page of the precinct voter registration list:

“IF YOU SIGN THIS FORM AND YOU ARE NOT A LAWFULLY REGISTERED VOTER, YOU ARE MAKING A FALSE STATEMENT AND MAY BE COMMITTING PERJURY. PERJURY IS PUNISHABLE BY UP TO A \$10,000 FINE AND UP TO 10 YEARS IMPRISONMENT.”

History. Acts 1993, No. 487, § 1; 1995, No. 946, § 2; 1995, No. 963, § 2; 2009, No. 959, § 3; 2013, No. 1297, § 2.

Amendments. The 2013 amendment inserted the (a)(1) designation and added (a)(2).

7-5-109. Computerized voter registration lists.

(a) The county clerks of the several counties of the state may reproduce the registered voter list maintained by the county clerk in any format that the office of the county clerk is capable of providing.

(b) The county clerks shall be entitled to a fee in connection with the preparation of any registered voter list that shall reimburse the county clerk for reproduction expenses. The value of office equipment previously secured for the office of the county clerk shall not be considered when determining the amount of this fee.

(c)(1)(A) Upon request every county clerk who maintains on computer the list of registered voters within the county shall provide the list on compact disc or other electronic medium.

(B) The list shall include at least the names, addresses, and precinct numbers of the voters.

(2)(A) The fee for a list, on compact disc or other electronic medium, of one (1) to five thousand (5,000) registered voters may be up to ten dollars (\$10.00).

(B) The fee for a list, on compact disc or other electronic medium, of five thousand one (5,001) to twenty-five thousand (25,000) registered voters may be up to twenty-five dollars (\$25.00).

(C) The fee for a list, on compact disc or other electronic medium, of more than twenty-five thousand (25,000) registered voters may be up to fifty dollars (\$50.00).

(3) If a printed list is requested, the cost of the list may be no more than two cents (2¢) per name and address.

History. Acts 1993, No. 1161, § 1; 1995, No. 924, § 2; 1995, No. 937, § 2; 1997, No. 451, § 5; 1999, No. 651, § 1; 2013, No. 1126, § 5.

substituted “compact disc or other electronic medium” for “computer disk or tape” in (c)(1)(A) and (c)(2)(A) through (c)(2)(C).

Amendments. The 2013 amendment

7-5-111. Candidacy for more than one (1) elected office — Limitations.

A person shall not run for election for more than one (1) state, county, or municipal office if the elections are to be held on the same date.

History. Acts 2013, No. 1471, § 1.

SUBCHAPTER 2 — PREELECTION PROCEEDINGS

SECTION.

7-5-201. Voter qualification. [Effective until contingency met.]

7-5-201. Voter qualification. [Contingent effective date.]

SECTION.

7-5-207. Ballots — Names included — Draw for ballot position.

Effective Dates. Acts 2013, No. 595, § 7, provided: "This act shall become effective upon the later of the following:

"(1) January 1, 2014; or

"(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act."

7-5-201. Voter qualification. [Effective until contingency met.]

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.

(b) "Voting residence" shall be a voter's domicile and shall be governed by the following provisions:

(1) The domicile of a person is that place in which his or her habitation is fixed to which he or she has the intention to return whenever he or she is absent;

(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place. A person can have only one (1) domicile at any given time;

(3) A person does not lose his or her domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning;

(4) The place where a person's family resides is presumed to be his or her place of domicile, but a person may acquire a separate residence if he or she takes another abode with the intention of remaining there;

(5) A married person may be considered to have a domicile separate from that of his or her spouse for the purposes of voting or holding office. For those purposes, domicile is determined as if the person were single; and

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

(c) No person may be qualified to vote in more than one (1) precinct of any county at any one (1) time.

(d)(1) Any person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter when appearing to vote in person either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(2) The provision of subdivision (d)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (d)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(e) Any person who receives an absentee ballot according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

History. Acts 1969, No. 465, Art. 7, § 7; § 1; 1999, No. 1471, § 1; 2003, No. 994, A.S.A. 1947, § 3-707; Acts 1987, No. 248, § 2; 2005, No. 2193, § 1; 2007, No. 560, § 7; 1993, No. 716, § 1; 1995, No. 930, § 2. § 2; 1995, No. 941, § 2; 1999, No. 1462,

RESEARCH REFERENCES

ALR. Validity of Statute Limiting Time Period for Voter Registration. 56 A.L.R.6th 523.

Validity of Residency and Precinct-Specific Requirements of State Voter Registration Statutes. 57 A.L.R.6th 419.

CASE NOTES

Registration.

Appeal by an inmate in an election-related matter was moot because an election had already been held, and the deadlines for placing the inmate's name on the

ballot and for registering to vote had already passed; the issue was not capable of repetition, yet evading review, since the inmate did not indicate that he intended to run for President of the United States

again in 2016 or later, there was nothing to suggest that, were he to run again, he would have been subjected to the same action, and there were adequate procedures in place for accelerated consider-

ation of election matters. Moreover, there was no substantial public interest shown. *Judd v. Martin*, 2013 Ark. 136, — S.W.3d — (2013).

7-5-201. Voter qualification. [Contingent effective date.]

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.

(b) "Voting residence" shall be a voter's domicile and shall be governed by the following provisions:

(1) The domicile of a person is that place in which his or her habitation is fixed to which he or she has the intention to return whenever he or she is absent;

(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place. A person can have only one (1) domicile at any given time;

(3) A person does not lose his or her domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning;

(4) The place where a person's family resides is presumed to be his or her place of domicile, but a person may acquire a separate residence if he or she takes another abode with the intention of remaining there;

(5) A married person may be considered to have a domicile separate from that of his or her spouse for the purposes of voting or holding office. For those purposes, domicile is determined as if the person were single; and

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

(c) No person may be qualified to vote in more than one (1) precinct of any county at any one (1) time.

(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day; or

(B) When voting by absentee ballot, submit with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter unless the voter is:

(i) A member of the uniformed services on active duty who is absent from the county on election day because of active duty;

(ii) A member of the merchant marine who is absent from the county on election day because of his or her service in the merchant marine; or

(iii) The spouse or dependent of a member identified in (d)(1)(B)(i) or (d)(1)(B)(ii) who is absent from the county on election day because of the active duty or service of the member.

(2)(A) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(B) A person not required to provide proof of identity under subdivision (d)(2)(A) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(e)(1) Any person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter when appearing to vote in person either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(2) The provision of subdivision (e)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C § 1973ff-1 et seq.;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C § 1973ee et seq.;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (e)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's social security number and with respect to whom a state or local election official matches the license number or social security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(f) Any person who receives an absentee ballot according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

History. Acts 1969, No. 465, Art. 7, § 7; A.S.A. 1947, § 3-707; Acts 1987, No. 248, § 7; 1993, No. 716, § 1; 1995, No. 930, § 2; 1995, No. 941, § 2; 1999, No. 1462, § 1; 1999, No. 1471, § 1; 2003, No. 994, § 2; 2005, No. 2193, § 1; 2007, No. 560, § 2; 2013, No. 595, §§ 2, 3.

Amendments. The 2013 amendment inserted (d) and redesignated former (d) as (e); substituted “(e)(1)” for “(d)(1)” twice in (e)(2); added “Act, 42 U.S.C § 1973ff-1

et seq.” at the end of (e)(2)(B); and added “42 U.S.C § 1973ee et seq.” at the end of (e)(2)(C).

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

7-5-207. Ballots — Names included — Draw for ballot position.

(a)(1) Except as provided in subdivisions (a)(2) and (3) of this section, all election ballots provided by the county board of election commissioners of any county in this state for any election shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the county board and shall not contain the name of any candidate or person who has not been certified.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, unopposed candidates for municipal offices shall be declared and certified elected without the necessity of including those names on the general election ballot.

(B) The names of all unopposed candidates for the office of mayor shall be separately placed on the general election ballot, and the votes for mayor shall be tabulated as in all contested races.

(3)(A)(i) Except as provided in subdivision (a)(3)(B) of this section, the names of all other unopposed candidates for all offices, including without limitation the names of all unopposed write-in candidates, shall be grouped together on the ballot indicating the office and the name of the unopposed candidate.

(ii) The phrase “Unopposed Candidates” shall appear at the top of the list of the names of all unopposed candidates.

(iii) Adjacent to the phrase “Unopposed Candidates” shall be a place in which the voter may cast a vote for all the candidates by placing an appropriate mark.

(B) The names of all unopposed candidates for the office of circuit clerk shall be separately placed on the general election ballot, and the votes for circuit clerk shall be tabulated as in all contested races.

(b) No person’s name shall be placed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing, or as otherwise may be provided by law, as a candidate for the office to hold the public office for which he or she is a candidate, except if a person is not qualified to hold the office at the time of filing because of age alone, the name of the person shall be placed on the ballot as a candidate for the office if the person will qualify to hold the office at the time prescribed by law for taking office.

(c)(1) The order in which the names of the candidates shall appear on the ballot shall be determined by lot at a public meeting of the county board not less than seventy-two (72) days before the general election.

(2) Notice of the public meeting shall be given by publication in a newspaper of general circulation in the county at least three (3) days before the drawing.

(3) For runoff elections, the ballot order for eligible candidates shall be the same as for the previous election leading to the runoff.

(d)(1) Adjacent to the name of each candidate in the general election shall be:

(A) His or her party designation; or

(B) The term “INDEPENDENT” if he or she represents no officially recognized party.

(2) Subdivision (d)(1) of this section does not apply to a:

(A) Nonpartisan election; or

(B) Nonpartisan municipal election.

History. Acts 1969, No. 465, Art. 6, § 13; 1971, No. 224, § 1; 1971, No. 261, §§ 20, 22; 1971, No. 355, §§ 1-3; 1971, No. 725, § 1; 1979, No. 389, § 1; A.S.A. 1947, §§ 3-613, 3-615; Acts 1997, No. 451, § 12; 2007, No. 1049, § 15; 2009, No. 959, § 6; 2009, No. 1480, § 19; 2011, No. 1185, § 6; 2013, No. 1110, § 4.

Amendments. The 2013 amendment substituted “Adjacent to” for “Beside or adjacent to” in (d)(1); substituted “does” for “shall” in (d)(2); and deleted “judicial” following “Nonpartisan” in (d)(2)(A).

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Periods Governing Election Contests. 60 A.L.R.6th 481.

Construction and Application of Stat-

utes and Ordinances Concerning Establishment of Residency, as Condition for Running for Municipal Office. 74 A.L.R.6th 209.

SUBCHAPTER 3 — CONDUCT OF ELECTIONS

SECTION.

7-5-301. Acquisition, use, and cost of voting systems.

7-5-305. Requirements. [Effective until contingency met.]

7-5-305. Requirements. [Contingent effective date.]

7-5-309. Voting procedure.

7-5-310. Privacy — Assistance to disabled voters.

SECTION.

7-5-317. Processing and delivery of election materials.

7-5-321. Procedure when voter fails to provide proof of identity. [Contingent effective date.]

7-5-322. Voter identification card. [Contingent effective date.]

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

7-5-301. Acquisition, use, and cost of voting systems.

(a) The casting and counting of votes in all elections shall be by:

(1) Voting machines selected by the Secretary of State;

(2) Electronic vote tabulating devices in combination with voting machines accessible to voters with disabilities to be selected by the Secretary of State; or

(3) Paper ballots counted by hand in combination with voting machines accessible to voters with disabilities selected by the Secretary of State.

(b)(1) All direct recording electronic voting machines shall include a voter-verified paper audit trail, except that those direct recording electronic voting machines in use during the 2004 general election may include a voter-verified paper audit trail at the discretion of the county election commission.

(2) All direct recording electronic voting machines purchased on or after January 1, 2006, shall include a voter-verified paper audit trail.

(c)(1) The quorum court of each county shall choose by resolution a voting system containing voting machines or electronic vote tabulating devices, or both, or voting machines in combination with paper ballots counted by hand for use in all elections in the county.

(2) Any voting machine or electronic vote tabulating devices chosen by the quorum court shall be those selected by the Secretary of State.

(3) Any voting system used in elections for federal office shall comply with the requirements of the federal Help America Vote Act of 2002.

(d)(1) Voting machines and electronic vote tabulating devices shall be purchased pursuant to a competitive bidding process with consideration given to:

(A) Price;

(B) Quality; and

(C) Adaptability to Arkansas ballot requirements.

(2)(A) The Secretary of State shall establish guidelines and procedures for a grant program to distribute funds from the County Voting System Grant Fund, § 19-5-1247.

(B) A grant provided to a county from the County Voting System Grant Fund, § 19-5-1247, shall be paid into the county treasury to the credit of the voting system grant fund.

(C) Moneys deposited into the voting system grant fund shall be appropriated by the quorum court according to the guidelines established by the Secretary of State under subdivision (d)(2)(A) of this section.

(e) The Secretary of State or the county shall not purchase or procure any voting machine or electronic vote tabulating device unless the party selling the machine or device shall:

(1) Guarantee the machines in writing for a period of one (1) year; and

(2) Provide, if deemed necessary by the county, personnel for the supervision and training of county personnel for at least two (2) elections, one (1) primary and one (1) general.

(f) Each county shall provide polling places that are adequate for the operation of the voting system, including, but not limited to, access, if necessary, to a sufficient number of electrical outlets and telephone lines.

(g) Each county shall provide or contract for adequate technical support for the installation, set up, and operation of the voting system for each election.

(h) The Secretary of State shall be responsible for the development, implementation, and provision of a continuing program to educate voters and election officials in the proper use of the voting system.

(i) Electronic vote tabulating devices and voting machines, authorized as provided under this subchapter, may be acquired and used in any election upon the adoption of an ordinance by the quorum court of the county.

(j) The costs of using electronic vote tabulating devices and voting machines at all general and special elections, including, but not limited to, costs of supplies, technical assistance, and transportation of the systems to and from the polling places, shall be paid in accordance with § 7-5-104.

(k) The county board of election commissioners shall have complete control and supervision of voting machines and electronic vote tabulating devices at all elections.

(l) The county clerk shall have supervision of voting machines and electronic vote tabulating devices used for early voting in the clerk's designated early voting location.

(m)(1) The county board of election commissioners shall have the care and custody of all voting machines and all electronic vote tabulating devices while not in use.

(2) The county board of election commissioners shall be responsible for the proper preparation, use, maintenance, and care of the voting machines and the electronic vote tabulating devices during the period of time required for that election.

History. Acts 1969, No. 465, Art. 7, § 2; 1971, No. 261, § 10; A.S.A. 1947, § 3-702; Acts 1995, No. 946, § 4; 1995, No. 963, § 4; 1997, No. 451, § 16; 2005, No. 2233, § 4; 2007, No. 1020, § 5; 2009, No. 959, §§ 8, 9; 2011, No. 1189, § 2; 2013, No. 277, § 1.

Amendments. The 2013 amendment rewrote (d)(2)(A); deleted "the fund to be known as" following "the credit of" in (d)(2)(B); and rewrote (d)(2)(C).

7-5-305. Requirements. [Effective until contingency met.]

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

(i) Verify with the county clerk's office the proper precinct; and

(ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;

(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;

(8)(A) Request the voter for purposes of identification to provide a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B)(i) If a voter is unable to provide this identification, the poll worker shall indicate on the precinct voter registration list that the voter did not provide identification.

(ii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of subdivision (a)(8)(A) of this section may cast a provisional ballot.

(iii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.

(iv) The prosecuting attorney may investigate possible voter fraud;

(9) Record the voter's name or request the voter to print his or her name on the list-of-voters form;

(10) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote; and

(11) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

History. Acts 1969, No. 465, Art. 7, § 8; § 1; 2001, No. 471, § 1; 2003, No. 994, A.S.A. 1947, § 3-708; Acts 1993, No. 487, § 4; 2003, No. 1308, § 4; 2005, No. 238, § 2; 1995, No. 946, § 6; 1995, No. 963, § 1; 2005, No. 2193, § 2; 2007, No. 1020, § 6; 1997, No. 451, § 18; 1999, No. 1454, § 8; 2009, No. 959, § 11.

7-5-305. Requirements. [Contingent effective date.]

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

(i) Verify with the county clerk's office the proper precinct; and

(ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;

(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;

(8)(A)(i) Except as provided in subdivisions (a)(8)(A)(ii) and (a)(8)(B)(ii) of this section, request the voter for purposes of identification to provide proof of identity.

(ii)(a) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(b) A person not required to provide proof of identity under subdivision (a)(8)(A)(ii)(a) of this section shall provide documentation

from the administrator of the facility attesting that the person is a resident of the facility.

(B)(i) If a voter is unable to provide this proof of identity, the poll worker shall:

(a) Indicate on the precinct voter registration list that the voter did not provide proof of identity; and

(b) Permit the voter to cast a provisional ballot.

(ii) When a voter is unable to provide proof of identity, the voter and the election official shall follow the procedure under § 7-5-321.

(iii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of § 7-5-201(e) may cast a provisional ballot.

(iv) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing proof of identity at the polls to the prosecuting attorney.

(v) The prosecuting attorney may investigate possible voter fraud;

(9) Record the voter's name or request the voter to print his or her name on the list-of-voters form;

(10) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote; and

(11) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

History. Acts 1969, No. 465, Art. 7, § 8; A.S.A. 1947, § 3-708; Acts 1993, No. 487, § 2; 1995, No. 946, § 6; 1995, No. 963, § 6; 1997, No. 451, § 18; 1999, No. 1454, § 1; 2001, No. 471, § 1; 2003, No. 994, § 4; 2003, No. 1308, § 4; 2005, No. 238, § 1; 2005, No. 2193, § 2; 2007, No. 1020, § 8; 2009, No. 959, § 11; 2013, No. 595, § 4.

Amendments. The 2013 amendment rewrote (a)(8).

Effective Dates. Acts 2013, No. 595, § 7, provided: "This act shall become effective upon the later of the following:

"(1) January 1, 2014; or

"(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act."

7-5-309. Voting procedure.

(a) Before giving the voter a ballot, a poll worker shall:

(1) Initial the back of the ballot;

(2) Remove the ballot stub; and

(3) Place the stub into the stub box provided.

(b)(1)(A) Upon receiving his or her ballot, the voter shall proceed to mark it appropriately.

(B) A voter shall not be allowed more than five (5) minutes to mark his or her ballot.

(2) The voter or the voter's authorized assistant shall deposit the marked ballot into the ballot box provided.

(c) The voter shall not be required to sign, initial, or in any way identify himself or herself with the ballot, the ballot stub, or the list of voters other than in the manner provided in this section.

(d) A poll worker may inspect the back of the ballot before the voter deposits it to see if it has been initialed by an election official.

(e) After having voted or having declined to vote, the voter shall immediately depart from the polling site.

(f) A person shall not carry a ballot outside of the polling place.

(g)(1) If a paper ballot is left in the polling site outside of the ballot box after the voter has departed, a poll worker shall:

(A) Write "Abandoned" on the face of the paper ballot;

(B) Place the paper ballot into an envelope marked "Abandoned Ballot";

(C) Note in writing on the outside of the envelope the circumstances surrounding the abandoned ballot; and

(D) Preserve the abandoned ballot separately.

(2) The county board of election commissioners shall not count the ballot.

(h)(1) If an electronic vote tabulating device at the polling site has rejected a ballot that remains in the receiving part of the device, two (2) poll workers shall override warnings on the device and complete the process of casting the ballot only if:

(A) The voter has departed the polling site; and

(B) The voter did not indicate that he or she chose to cancel or replace the ballot.

(2) The poll workers shall document:

(A) The time;

(B) The name of the voter;

(C) The names of the poll workers completing the process of casting the ballot; and

(D) All other circumstances surrounding the abandoned ballot.

History. Acts 1969, No. 465, Art. 7, § 11; A.S.A. 1947, § 3-711; Acts 1997, No. 451, § 21; 2005, No. 880, § 2; 2007, No. 224, § 5; 2007, No. 834, § 1; 2009, No. 959, § 13; 2011, No. 1033, § 1; 2013, No. 1424, § 1; 2013, No. 1461, § 1.

Amendments. The 2013 amendment by No. 1424 rewrote (a)(4), (c)(1)(A), and (c)(2); and inserted "or the voter's authorized assistant" in the introductory language of (g)(1) and in (h)(1).

The 2013 amendment by 1461 deleted former (a) and redesignated former (b),

(c), (d)(1), and (d)(2) as present (a), (b), (c), and (d) respectively; substituted "appropriately" for "by placing an appropriate mark" in (b)(1)(A); in (b)(2), substituted "or the voter's authorized assistant shall" for "shall then personally" and inserted "marked"; substituted "provided" for "set forth" in (c); substituted "declined to vote" for "having declined to do so" in (e); deleted "be permitted to" preceding "carry" in (f); and rewrote the introductory language of (g)(1) and (h)(1).

7-5-310. Privacy — Assistance to disabled voters.

(a)(1) Each voter shall be provided the privacy to mark his or her ballot. Privacy shall be provided by the poll workers at each polling site or by the county clerk, if the county clerk conducts early voting, to ensure that a voter desiring privacy is not singled out.

(2)(A) In a county that uses paper ballots, the county board of election commissioners shall:

- (i) Provide voting booths at a polling site; and
- (ii) Determine the appropriate number of voting booths at a polling site.

(B) A voting booth shall be:

(i) Constructed to permit the voter to prepare his or her ballot screened from observation;

(ii) Furnished with supplies and conveniences that will enable the voter to prepare his or her ballot; and

(iii) Situated in the plain view of a poll worker.

(C) If a person is not a poll worker and is not casting a ballot, he or she shall not be within six feet (6') of the voting booths, unless:

- (i) The person is authorized by an election judge; and
- (ii) The person's presence is necessary to keep order or enforce the law.

(3) A person may not enter a polling place on election day during voting hours unless the person is:

(A) An election official;

(B) An authorized poll watcher;

(C) A voter present to cast his or her ballot;

(D) A person in the care of a voter if the person:

(i) Does not disrupt or interfere with the normal voting procedures; and

(ii) Is not eligible to vote in that election;

(E) A person lawfully assisting the voter;

(F) A law enforcement officer or emergency service personnel who are acting in the line of duty;

(G) A monitor authorized by the State Board of Election Commissioners or observer authorized by a federal agency with the authority to place the observer at the polling place;

(H)(i) A person with business in the polling place that is not connected to the election.

(ii) A person with business in the polling place that is not connected to the election shall remain outside of the voting room except to pass through or by the voting room with the purpose to conduct his or her business;

(I) A person that the county board of election commissioners has authorized to assist in conducting the election; and

(J) A person authorized by the State Board of Election Commissioners or county board of election commissioners.

(b)(1) A voter shall inform the poll workers at the time that the voter presents himself or herself to vote that he or she is unable to mark or

cast the ballot without help and needs assistance in casting his or her ballot.

(2) The voter shall be directed to a voting machine equipped for use by persons with disabilities by which he or she may elect to cast his or her ballot without assistance, or the voter may request assistance with either the paper ballot or the voting machine, depending on the voting system in use for the election, by:

(A) Two (2) poll workers; or

(B) A person named by the voter.

(3) If the voter is assisted by two (2) poll workers, one (1) of the poll workers shall observe the voting process and one (1) may assist the voter in marking and casting the ballot according to the wishes of the voter without comment or interpretation.

(4)(A) If the voter is assisted by one (1) person named by the voter, he or she may assist the voter in marking and casting the ballot according to the wishes of the voter without any comment or interpretation.

(B) No person other than the following shall assist more than six (6) voters in marking and casting a ballot at an election:

(i) A poll worker;

(ii) The county clerk during early voting; or

(iii) A deputy county clerk during early voting.

(5) It shall be the duty of the poll workers at the polling site to make and maintain a list of the names and addresses of all persons assisting voters.

(c) Any voter who because of physical, sensory, or other disability who presents himself or herself for voting and who then informs a poll worker at the polling site that he or she is unable to stand in line for extended periods of time shall be entitled to and assisted by a poll worker to advance to the head of any line of voters then waiting in line to vote at the polling site.

History. Acts 1995, No. 908, § 1; 1995, No. 1296, § 39; 1997, No. 451, § 22; 2003, No. 1308, § 1; 2005, No. 2233, § 6; 2007, No. 1020, § 7; 2009, No. 658, § 3; 2009, No. 959, § 14; 2013, No. 1461, § 2.

Amendments. The 2013 amendment added (a)(2) and (3).

7-5-317. Processing and delivery of election materials.

(a) After the polls close, all of the election materials shall be processed and delivered in the following manner:

(1) The poll workers shall total the number of voters on the list-of-voters form and certify and attest the form;

(2) The list-of-voters form, precinct voter registration list, voter registration application forms, and other recordkeeping supplies shall be delivered to the county clerk;

(3) Certificates of election results and tally sheets:

(A) One (1) copy of the certificate of election results with one (1) copy of the tally sheets, if any, shall be delivered to the county clerk; and

(B) One (1) copy of the certificate of election results shall be returned with one (1) copy of the tally sheets, if any, and reports of challenges of voters, if any, to the county board of election commissioners;

(4) Ballots:

(A) The poll workers shall securely envelope any voted ballots separately from any unused ballots and place the ballots in a container with a numbered seal and then deliver the ballots with the tally sheets, if any, and other election materials to the county board of election commissioners; and

(B) All cancelled ballots shall be preserved separately from the other ballots and returned to the county board of election commissioners; and

(5) Sealed stub boxes shall be delivered to the county treasurer for storage.

(b) All of the election materials and returns shall be delivered to the county board of election commissioners or to the county treasurer, in the case of the stub boxes, by the poll workers immediately after the polls close.

History. Acts 1969, No. 465, Art. 7, § 18; A.S.A. 1947, § 3-718; 1995, No. 946, § 9; Acts 1995, No. 963, § 9; 1997, No. 451, § 28; 2001, No. 797, § 1; 2005, No. 67, § 9; 2009, No. 959, § 15; 2009, No. 1480, § 30; 2013, No. 236, § 1.

Amendments. The 2013 amendment inserted "or to the county treasurer in the case of the stub boxes" in (b).

7-5-321. Procedure when voter fails to provide proof of identity. [Contingent effective date.]

(a) If the voter is listed on the precinct voter registration list but fails to provide proof of identity, the election official shall:

(1) Indicate on the precinct voter registration list that the voter did not provide proof of identity; and

(2) Permit the voter to cast a provisional ballot.

(b)(1) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(2) A person not required to provide proof of identity under subdivision (b)(1) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(c) A provisional ballot cast by a voter who did not provide proof of identity shall be counted if:

(1) The voter returns to the county board of election commissioners or the county clerk by 12:00 p.m. on the Monday following the election and:

- (A) Provides proof of identity; or
- (B) Provides an affidavit stating that the voter cannot provide proof of identity because the voter:
 - (i) Is indigent; or
 - (ii) Has a religious objection to being photographed; and
- (2) The voter has not been challenged or required to vote a provisional ballot for any other reason.

History. Acts 2013, No. 595, § 5.

Effective Dates. Acts 2013, No. 595, § 7, provided: "This act shall become effective upon the later of the following:

"(1) January 1, 2014; or

"(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act."

7-5-322. Voter identification card. [Contingent effective date.]

(a)(1)(A) The Secretary of State shall provide by rule for the issuance of a voter identification card that may be requested by an individual to be used as proof of identity when appearing to vote in person.

(B) The rules shall include, without limitation:

(i) A requirement that the voter identification card include a photograph of the voter;

(ii) Specification of the information to be included on the voter identification card;

(iii) Provisions concerning the expiration of a voter identification card; and

(iv) Provisions for the proof of identity to be provided by the county clerk of the county in which the voter is registered to vote.

(2) Providing for the issuance of a voter identification card under subdivision (a)(1)(A) of this section may include without limitation the purchase by the Secretary of State of cameras and other equipment necessary to generate a voter identification card in the office of the county clerk.

(b) A voter identification card shall be issued without the payment of a fee or charge to an individual who:

(1) Does not have another valid form of proof of identity; and

(2)(A) Is registered to vote; or

(B) Will be at least eighteen (18) years of age at the next election and has submitted a voter registration application.

(c)(1) The Secretary of State or the county clerk shall not require or accept payment for a voter identification card issued for the sole purpose of voter identification.

(2)(A) A person requesting a voter identification card for the sole purpose of voter identification shall sign an oath that he or she does not possess proof of identity under § 7-1-101(30).

(B) The oath shall include the definition of proof of identity under § 7-1-101(30).

History. Acts 2013, No. 595, § 5.

A.C.R.C. Notes. Acts 2013, No. 1376,

§ 16, provided: "VOTER ID RULES AND REGULATIONS AND REPORTING. The

Secretary of State shall promulgate rules and regulations regarding the issuance of a voter identification card that may be requested by an individual to be used as proof of identity when appearing to vote in person upon prior review by the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council or Joint Budget Committee. In addition, the Secretary of State shall also report for review by the Arkansas Legislative Council or Joint Budget Committee a report outlining in detail the total amount of monies expended by the Secretary of State to implement the voter identification program. Further, the Secretary

of State shall also report to the Arkansas Legislative Council or Joint Budget Committee within 60 days after the next General Election, the number of persons who obtained a Voter ID.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

SUBCHAPTER 4 — ABSENTEE VOTING

SECTION.

7-5-403. Designated bearers, authorized agents, and administrators.

7-5-404. Applications for ballots.

7-5-405. Application form.

7-5-407. Preparation and delivery of ballots.

7-5-408. List of applications — Preparation, preservation, and inspection.

SECTION.

7-5-409. Materials furnished to qualified voters.

7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.

7-5-416. Counting of absentee ballots.

7-5-418. Early voting. [Effective until contingency met.]

7-5-418. Early voting. [Contingent effective date.]

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

7-5-403. Designated bearers, authorized agents, and administrators.

(a)(1) A designated bearer may obtain absentee ballots for no more than two (2) voters per election.

(2)(A) A designated bearer shall not have more than two (2) absentee ballots in his or her possession at any time.

(B) If the county clerk knows or reasonably suspects that a designated bearer has more than two (2) absentee ballots in his or her possession, the county clerk shall notify the prosecuting attorney.

(3)(A) A designated bearer receiving an absentee ballot from the county clerk for a voter shall obtain the absentee ballot directly from the county clerk and deliver the absentee ballot directly to the voter.

(B) A designated bearer receiving an absentee ballot from a voter shall obtain the absentee ballot directly from the voter and deliver the absentee ballot directly to the county clerk.

(4)(A) A designated bearer may deliver to the county clerk the absentee ballots for not more than two (2) voters.

(B) The designated bearer shall be named on the voter statement accompanying the absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk:

(A) The designated bearer shall show a form of current photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating receipt of the voter's absentee ballot; and

(D) The county clerk shall indicate beside the designated bearer's name on the register that he or she obtained an absentee ballot for a voter.

(6) When a designated bearer delivers an absentee ballot to the county clerk:

(A) The designated bearer shall present current and valid photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating delivery of the voter's absentee ballot;

(D) The county clerk shall not accept an absentee ballot from a designated bearer who does not sign the register under oath; and

(E) The county clerk shall write or stamp the word "BEARER" and write the designated bearer's name and address on the voter's absentee ballot return envelope.

(7) When providing an absentee ballot to a designated bearer or receiving an absentee ballot from a designated bearer, the county clerk shall provide to the designated bearer a written notice informing the designated bearer that:

(A) A designated bearer may obtain ballots for no more than two (2) voters per election;

(B) A designated bearer shall at no time have more than two (2) ballots in his or her possession;

(C) A designated bearer shall not deliver ballots to the county clerk for more than two (2) voters per election; and

(D) Possession of an absentee ballot with the intent to defraud a voter or an election official is a felony under § 7-1-104.

(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.

(b)(1) An authorized agent may deliver applications for absentee ballots to the county clerk and obtain absentee ballots from the county clerk for not more than two (2) voters per election who cannot cast a

ballot at the appropriate polling place on election day because the voter is a patient in a hospital or long-term care or residential care facility licensed by the state.

(2) At no time shall an authorized agent have more than two (2) absentee ballots in his or her possession.

(3)(A) An authorized agent receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) An authorized agent receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4)(A) In order for an authorized agent to obtain a ballot from the county clerk, the authorized agent shall submit to the county clerk an affidavit from the administrative head of a hospital or long-term care or residential care facility licensed by the state that the applicant is a patient of the hospital or long-term care or residential care facility licensed by the state and is thereby unable to vote on the election day at his or her regular polling site.

(B) A copy of the affidavit shall be retained by the county clerk as an attachment to the application for an absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk, the:

(A) Authorized agent shall present current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating receipt of the voter's ballot.

(6) When an authorized agent delivers an absentee ballot to the county clerk, the:

(A) Authorized agent shall show some form of current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register;

(C) Authorized agent shall sign the register under oath indicating delivery of the voter's ballot; and

(D) The county clerk shall not accept an absentee ballot from an authorized agent who does not sign the register under oath.

(7) The county clerk shall write or stamp the words "AUTHORIZED AGENT" and the agent's name and address on the voter's absentee ballot return envelope.

(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.

(c)(1) The county clerk shall keep a register of designated bearers and authorized agents.

(2) The designated bearer and authorized agent register shall contain the following oath on each page: "I ACKNOWLEDGE THAT ARKANSAS LAW PROHIBITS DESIGNATED BEARERS AND AUTHORIZED AGENTS FROM RECEIVING OR RETURNING MORE

THAN TWO (2) ABSENTEE BALLOTS PER ELECTION. I HAVE COMPLIED WITH THE ARKANSAS LAW. I UNDERSTAND THAT IF I PROVIDE FALSE INFORMATION ON THIS FORM, I MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL AND STATE LAWS."

(d)(1)(A) An administrator may deliver to the county clerk an application for an absentee ballot for any voter who is a patient of a long-term care or residential care facility licensed by the state and who authorizes the administrator to obtain an absentee ballot on his or her behalf.

(B) The absentee ballot application shall identify the administrator by name as the administrator of the facility where the voter resides.

(2) Upon presentation of photographic identification to the county clerk, an administrator may receive absentee ballots for as many qualified residents of the facility as:

(A) Apply for absentee ballots; and

(B) Identify the administrator in the voter's absentee ballot application.

(3)(A) An administrator may deliver the absentee ballot to the county clerk for any voter who names the administrator on his or her application and voter statement.

(B) Absentee ballots may be delivered to the county clerk in person by the administrator or by mail.

(4) Before obtaining an absentee ballot, an administrator shall submit to the county clerk an affidavit, signed and dated by the administrator, stating:

(A) That he or she is the administrative head of a long-term care or residential care facility licensed by the state;

(B) The name and address of the facility;

(C) That he or she has been authorized by the voters who reside in his or her facility to obtain from the county clerk and return to the county clerk absentee ballots on their behalf; and

(D) That each of the voters for whom the administrator seeks to obtain an absentee ballot has named the administrator on his or her application.

(5) The county clerk shall attach a copy of the administrator's affidavit to each application for an absentee ballot delivered by the administrator to the county clerk.

(6) When the ballots are returned by the administrator in person or by mail, the county clerk shall write or stamp the word "ADMINISTRATOR" and write the administrator's name on the voter's absentee ballot return envelope.

(e) Any person who knowingly makes a false statement on an affidavit required by this section shall be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment of up to ten (10) years.

History. Acts 2007, No. 543, § 2; 2009, No. 250, §§ 15–17; 2009, No. 959, §§ 16, 22; 2011, No. 1043, § 1; 2013, No. 1424, § 2.

Amendments. The 2013 amendment by No. 1424, in (a)(1), deleted “from the county clerk” following “ballots” and inserted “per election” at the end; inserted “obtain the absentee ballot directly from the county clerk and” or similar language

in (a)(3)(A) and (a)(3)(B); substituted “When a designated bearer delivers” for “Upon delivering” or similar language in (a)(6) and (b)(6); inserted “per election” in (a)(7)(A), (a)(7)(C) and (b)(1); inserted (a)(6)(E), (a)(8), (b)(6)(D), (b)(7), (b)(8), (d)(1)(B), (d)(2)(B), (d)(4)(D), (d)(5) and (d)(6); and rewrote (c)(2), (d)(1)(A), (d)(2) and (d)(4).

7-5-404. Applications for ballots.

(a)(1)(A) Applications for absentee ballots must be signed by the applicant and verified by the county clerk by checking the voter’s name, address, date of birth, and signature from the registration records unless the application is sent by electronic means.

(B) If the application is sent by electronic means, the application must bear a verifiable facsimile of the applicant’s signature.

(2)(A) If the signatures on the absentee ballot application and the voter registration record are not similar, the county clerk shall not provide an absentee ballot to the voter.

(B) If the absentee ballot request is rejected under subdivision (a)(2)(A) of this section, the county clerk shall:

(i) Provide notice promptly to the voter of the rejection;

(ii) Allow the voter to resubmit the request; and

(iii) Electronically record the rejection in the permanent system maintained by the county clerk.

(C) The notice to the voter under subdivision (a)(2)(B) of this section shall be made by:

(i) The most efficient means available, including without limitation by telephone or email; and

(ii) Written notice sent by first-class mail to the address where the voter is registered to vote.

(3) Delivery of the request for an absentee ballot to the county clerk may be made in one (1) of the following ways, and in no other manner:

(A) For applications submitted using the form prescribed in § 7-5-405:

(i) In person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk’s office regularly closes on the day before election day;

(ii) Applications by mail must be received in the office of the county clerk of the county of residence of the voter not later than seven (7) days before the election for which the application was made;

(iii) A designated bearer may deliver the completed application to the office of the county clerk of the county of residence of the applicant not later than the time the county clerk’s office regularly closes on the day before the day of the election;

(iv) A person declared as the authorized agent of the applicant may deliver the application to the office of the county clerk of the county of

residence of the applicant not later than 1:30 p.m. on the day of the election;

(v) An administrator may deliver the application in person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk's office regularly closes on the day before election day; or

(vi)(a) Delivery by electronic means to the county clerk's office of the county of residence of the voter not later than seven (7) days before the election for which the application was made.

(b) The completed application sent by electronic means will be accepted only upon verification of the facsimile signature of the applicant by the county clerk.

(c) Once verified as a reasonable likeness of the voter's signature, the signature appearing on a copy of an application sent by electronic means shall be presumed to be authentic until proven otherwise; or

(B) If the applicant does not use the form prescribed in § 7-5-405, he or she may make an application for an absentee ballot as follows:

(i) A letter or postcard must be received in the office of the county clerk not later than seven (7) days before the date of the election. The letter or postcard shall contain information sufficient for the county board of election commissioners and the county clerk to accept the letter or postcard in lieu of the application form; or

(ii) An applicant may transmit a written request for an absentee ballot by electronic means that shall contain the voter's signature and other information sufficient for acceptance in lieu of the application form.

(b)(1) Any person eligible to vote by absentee ballot may request the county clerk to mail to an address within the continental United States an application for an absentee ballot.

(2)(A) For those persons voting by absentee ballot who reside outside the county in which they are registered to vote, the application shall remain in effect for one (1) year unless revoked by the voter, and the county clerk shall thereafter automatically mail no later than twenty-five (25) days before each election an absentee ballot for each election.

(B)(i) For those persons voting by absentee ballot who reside within the county in which they are registered to vote, the application shall be valid for only one (1) election cycle.

(ii) The election cycle shall include any one (1) election and the corresponding runoff election.

(C)(i) For a voter residing in a long-term care or residential care facility licensed by the state the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.

(ii) The county clerk automatically shall mail no later than twenty-five (25) days before each election an absentee ballot for each election unless, before mailing, the administrator of the facility has presented an absentee ballot request from the voter authorizing the administrator to receive the absentee ballot on behalf of the voter for that election.

(D)(i) For a voter with a disability as defined in § 7-5-311, the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.

(ii) The county clerk automatically shall mail no later than twenty-five (25) days before each election an absentee ballot for each election.

(c) The following may request an absentee ballot for one (1) or more elections, up to and including the next regularly scheduled general election for federal office, including without limitation any runoff elections that may occur as a result of the outcome of the general elections, by submitting one (1) application during that period of time in the manner provided under subsection (a) of this section:

(1) A citizen of the United States temporarily residing outside the territorial limits of the United States;

(2) A member of the uniformed services of the United States while in active duty or service, including his or her spouse or dependent, who by reason of active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote; and

(3) A member of the United States Merchant Marine while in active duty or service, including his or her spouse or dependent, who by reason of the active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote.

(d) As used in this section, “electronic means” means a scanned image sent by:

- (1) Electronic mail; or
- (2) Facsimile machine.

History. Acts 1969, No. 465, Art. 9, § 4; 1981, No. 685, § 1; 1983, No. 430, § 1; 1985, No. 1019, § 1; A.S.A. 1947, § 3-904; Acts 1987, No. 248, § 9; 1987, No. 843, § 1; 1991, No. 863, § 1; 1993, No. 303, § 1; 1993, No. 1201, § 1; 1995, No. 686, § 3; 1995, No. 948, § 3; 1997, No. 1092, § 1; 1999, No. 1111, § 1; 1999, No. 1538, §§ 2, 3; 2003, No. 994, § 8; 2005, No. 67, § 11; 2007, No. 543, § 1; 2007, No. 556, § 3; 2009, No. 250, § 4; 2009, No. 959, § 16; 2011, No. 1188, § 1; 2013, No. 1424, § 3.

Amendments. The 2013 amendment

redesignated former (a)(1) as present (a)(1)(A) and (a)(1)(B); redesignated former (a)(2) as (a)(3) and inserted (a)(2); substituted “unless the application is sent by electronic means” for “or, if” in (a)(1)(A); inserted “If the application is” in (a)(1)(B); substituted “For” for “Except for persons of long term care or residential facilities licensed by the state or other persons who are voters with disabilities as defined in § 7-5-311(d), for” in (b)(2)(B)(i); inserted (b)(2)(C) and (b)(2)(D); and, in (c), deleted “two (2)” following “the next,” and substituted “election” for “elections.”

7-5-405. Application form.

(a)(1) Applications for absentee ballots may be made on a form or forms prescribed by the Secretary of State and furnished by the county clerk at least sixty (60) days before the election.

(2) The form or forms shall contain the following information:

(A) The following statement:

"IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS.";

(B) A statement in which the voter must indicate that he or she is requesting an absentee ballot because he or she will be:

- (i) Unavoidably absent from the polling site on election day;
- (ii) Unable to attend the polls on election day because of illness or physical disability; or
- (iii) Unable to attend the polls on election day because of residence in a long-term care or residential facility licensed by the state;

(C) A statement by the voter indicating whether he or she resides outside the county;

(D) A statement indicating whether the voter is a United States citizen residing outside the territorial limits of the United States;

(E) A statement indicating whether the voter is in active service as a member of the armed services of the United States;

(F) Mailing information for the ballot or the name and signature of a designated bearer, an administrator, or an authorized agent;

(G) The date, the voter's printed or typed name, voting residence address, date of birth, and the voter's signature attesting to the correctness of the information provided under penalty of perjury; and

(H) The election in which the voter wishes to cast an absentee ballot.

(b) The Secretary of State may prescribe separate absentee ballot application forms for:

(1)(A) Persons who reside within the county in which they are registered to vote and will be unavoidably absent from the polls on the date of the election.

(B) The application shall be valid for one (1) election cycle, which includes any one (1) election and the corresponding runoff election;

(2)(A) Persons whose application would be valid for one (1) calendar year.

(B) This includes the following:

(i) Persons who reside outside the county in which they are registered to vote;

(ii) Persons in long-term care or residential facilities licensed by the state; and

(iii) Voters with disabilities; and

(3) Persons whose applications would be valid through the next regularly scheduled general election for federal office, including any resulting runoff elections.

(c) Any person may distribute blank applications for absentee ballots.

History. Acts 1969, No. 465, Art. 9, § 5; § 2; 1995, No. 686, § 5; 1995, No. 948, 1971, No. 184, § 2; 1983, No. 430, § 2; § 5; 1997, No. 1092, § 2; 1999, No. 918, 1985, No. 1019, § 2; A.S.A. 1947, § 3-905; § 1; 2001, No. 1789, § 9; 2003, No. 1202, Acts 1987, No. 843, § 2; 1989, No. 912, § 1; 2003, No. 1275, § 1; 2005, No. 67, § 7; 1993, No. 303, § 2; 1993, No. 1201, § 12; 2007, No. 543, § 3; 2007, No. 556,

§ 4; 2009, No. 250, §§ 5, 6; 2011, No. 1188, § 2; 2013, No. 1424, § 4. in (b)(3), deleted “two (2)” following “the next” and substituted “election” for “elections.”

Amendments. The 2013 amendment,

7-5-407. Preparation and delivery of ballots.

(a)(1) The county board of election commissioners shall prepare official absentee ballots and deliver them to the county clerk for mailing to all qualified applicants as soon as practicable but not later than forty-seven (47) days before a preferential primary election, general election, school election, nonpartisan general election, nonpartisan runoff election, or special election.

(2) Upon the receipt of the absentee ballots, the county clerk shall begin delivering ballots to absentee voters as soon as practicable and, no later than forty-six (46) days before the applicable election, shall deliver ballots to those absentee voters who made timely application under:

(A) Section 7-5-406; or

(B) 42 U.S.C. § 1973ff, et seq., as existing on January 1, 2011.

(b) The county board shall prepare official absentee ballots and deliver them to the county clerk for mailing to any qualified applicant as soon as practicable but in any event not later than ten (10) days before all other elections not included in subsection (a).

History. Acts 1969, No. 465, Art. 9, § 2; 1971, No. 261, § 28; A.S.A. 1947, § 3-902; Acts 1997, No. 1092, § 4; 1999, No. 649, § 1; 2001, No. 1789, § 10; 2007, No. 1049, § 17; 2011, No. 1185, § 7; 2013, No. 1110, § 5.

Amendments. The 2013 amendment, in (a)(1), deleted “in any event” following “practicable but” once, “judicial” following “nonpartisan” twice, and “any” following “runoff election, or” once.

7-5-408. List of applications — Preparation, preservation, and inspection.

(a) The county clerk shall make a list of the applications for absentee ballots as the applications are received and shall keep the list of applications and retain the application forms after the election in which they are to be used for the same period as is required for retaining ballots.

(b) When each absentee ballot is returned to the county clerk, the clerk shall indicate on the list of applications that the absentee ballot was returned.

(c) The list and applications shall be available to public inspection during regular business hours from sixty (60) days prior to the election until they are destroyed.

(d)(1) The county clerk shall record in the electronic voter registration system the date the county clerk receives the voter's:

(A) Absentee ballot application; and

(B) Absentee ballot.

(2) Except as provided in subdivision (d)(3) of this section, during the sixty (60) days before election day, the county clerk shall record in the electronic voter registration system:

(A) Within one (1) business day after the receipt of the voter's absentee ballot, the date the county clerk received the voter's absentee ballot; and

(B) Within two (2) business days after receipt of the voter's absentee ballot application, the date the county clerk received the absentee ballot application.

(3) If a voter's absentee ballot is received by the county clerk on election day, the county clerk immediately shall record the date the absentee ballot was received.

(4) The county clerk shall not provide an absentee ballot to an election official for counting unless the ballot has been marked as received in the electronic voter registration system.

History. Acts 1969, No. 465, Art. 9, § 6; 1983, No. 430, § 3; 1985, No. 567, § 5; 1985, No. 568, § 5; A.S.A. 1947, § 3-906; Acts 1997, No. 1092, § 5; 2013, No. 1424, § 5.

Amendments. The 2013 amendment inserted (b) and (d) and redesignated the remaining subsections accordingly.

7-5-409. Materials furnished to qualified voters.

(a)(1)(A) The county clerk must satisfy himself or herself that the applicant for an absentee ballot is a qualified registered elector in the ward, precinct, or township in which he or she claims to be a resident or that the applicant does not require prior registration under § 7-5-406.

(B) The county clerk shall verify that the application has been properly signed by the applicant and, if necessary, the designated bearer, administrator, or authorized agent. If the application is not properly signed, the application shall be rejected by the county clerk.

(C) The county clerk shall notify the applicant of the reason for the rejection.

(2) If the county clerk is unable to contact the applicant to cure the deficiency, the county clerk shall forward the application with the reason for the rejection to the county board of election commissioners. The county board of election commissioners shall determine whether the applicant is a qualified elector.

(b) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as "Absentee Stub Box" and deliver to the applicant or to the applicant's designated bearer, authorized agent, or administrator for delivery to the applicant the following materials:

(1) An official absentee ballot for each election named in the application;

(2) Instructions for voting and returning the official absentee ballot to the county clerk;

(3) An official absentee ballot secrecy envelope on which there shall be written or printed the words "Ballot Only";

(4)(A)(i) A voter statement.
(ii) The voter statement shall include the following heading in bold capitalized letters: **"THIS VOTER STATEMENT MUST BE COMPLETED AND RETURNED IN THE MAILING ENVELOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED."**

(iii) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: **"THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."**

(iv) The voter statement shall include a statement that the voter resides at the address on his or her application.

(v) The voter statement shall include a statement for a first-time voter who registers by mail: "If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address."

(B) Blanks shall be provided for the voter to provide his or her printed name, signature, address, date of birth, printed name and address of the administrator, authorized agent, or designated bearer, signature of administrator, authorized agent, or designated bearer, and address of the administrator, authorized agent, or designated bearer;

(5) A sealable envelope upon which shall be printed or written the words: "Return Envelope", the address of the county clerk, the precinct of the voter, and the words: "ABSENTEE BALLOT,, ELECTION"; and

(6) An authorized agent authorization form, as follows:

"AGENT AUTHORIZATION FORM
If applicable, fill out and sign this form and place it in the Return Envelope
I hereby authorize(insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.
.....
signature of voter
.....
printed name of voter

.....
address of voter
.....
date of birth of voter”

(c)(1) Except for absentee ballots mailed to an address outside the county in which the applicant is registered, an absentee ballot shall be mailed to the address that appears on the applicant’s registration record or absentee ballot application if the voter is temporarily at a different address.

(2) The county clerk shall not mail more than two (2) absentee ballots to the same address unless:

- (A) The address is outside the territorial limits of the United States;
- (B) The address is for a long-term care or residential care facility licensed by the state; or
- (C) There are more than two (2) persons lawfully registered at the same address.

(d) The county clerk shall not deliver an absentee ballot to any person other than the absentee voter unless the person picking up the ballot provides current and valid photographic identification to the county clerk that he or she is:

- (1) The voter’s:
 - (A) Designated bearer; or
 - (B) Authorized agent; or

(2) The administrator of a long-term care or residential care facility licensed by the state in which the voter resides.

(e) The county clerk shall not provide more than two (2) absentee ballots per election to any designated bearer or authorized agent, nor shall the county clerk accept delivery of more than two (2) absentee ballots per election from any designated bearer or authorized agent.

(f) A designated bearer shall be allowed to pick up only two (2) absentee ballots from the county clerk only during the fifteen (15) days prior to a school election, special election, preferential primary election, or general election and seven (7) days prior to a runoff election, including a general primary election.

(g) Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration list and the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter.

History. Acts 1969, No. 465, Art. 9, § 7; 1971, No. 261, § 25; 1983, No. 430, § 4; 1985, No. 567, § 3; 1985, No. 568, § 3; A.S.A. 1947, § 3-907; Acts 1987, No. 843, § 3; 1989, No. 912, § 8; 1993, No. 1201, § 3; 1995, No. 103, § 1; 1997, No. 1092, § 6; 1999, No. 918, § 2; 1999, No. 1243, §§ 1, 2; 1999, No. 1344, § 1; 1999, No. 1538, § 1; 2001, No. 1379, § 1; 2003, No. 647, § 1; 2003, No. 994, § 10; 2003, No. 1202, § 2; 2003, No. 1275, §§ 2, 3; 2005, No. 880, § 4; 2005, No. 2193, § 3; 2007, No. 543, § 4; 2007, No. 556, § 7; 2009, No. 26, § 2; 2009, No. 250, §§ 9, 10; 2009, No. 375, § 2; 2013, No. 1424, §§ 6–8.

Amendments. The 2013 amendment substituted “does not require prior” for “is exempted from” in (a)(1)(A); inserted

“printed name and address of the administrator, authorized agent, or designated bearer” in (b)(4)(B); and inserted “electronic voter registration list and the” in (g).

7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.

(a) Upon receiving the blank absentee ballot, voter statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the absentee ballot and place the absentee ballot in the provided envelope. He or she shall then seal the envelope containing the absentee ballot and place it in the other provided outer envelope with the following:

(1) The completed and executed voter statement, including identification of the designated bearer, authorized agent, or administrator when appropriate; and

(2) A copy of a current and valid photographic identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the first-time voter, for first-time voters who registered by mail. However, this requirement does not apply if:

(A) The voter registered to vote by mail and provided the identification at that time; or

(B) The first-time voter registered to vote by mail and submitted his or her driver’s license number or at least the last four (4) digits of his or her social security number at the time and this information matches the information in an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(b) A voter who desires to cast an absentee ballot but who does not meet the identification requirements of subdivision (a)(2) of this section may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot.

(c) After recording receipt of the absentee ballot in the electronic voter registration system, absentee ballots received by mail on election day before the polls close shall be delivered promptly by the county clerk to the election officials designated to canvass and count absentee ballots.

History. Acts 1969, No. 465, Art. 9, § 11; 1970 (Ex. Sess.), No. 28, § 2; A.S.A. 1947, § 3-911; Acts 1997, No. 1092, § 8; 2003, No. 647, § 2; 2003, No. 994, § 11; 2005, No. 880, § 5; 2007, No. 556, § 9; 2009, No. 250, § 13; 2013, No. 1424, § 9.

Amendments. The 2013 amendment inserted “voter” preceding “statement” in

(a); in (a)(1), inserted “completed and” and “including identification of the designated bearer, authorized agent, or administrator when appropriate”; and substituted “After recording receipt of the absentee ballot in the electronic voter registration system, absentee” for “Absentee” in (c).

7-5-416. Counting of absentee ballots.

(a)(1) The election officials for absentee ballots shall meet in a place designated by the county board of election commissioners no earlier than 8:30 a.m. on election day for the purpose of processing absentee ballots.

(2) The county board shall give public notice of the time and location of the opening, processing, canvassing, and counting of absentee ballots and early voting ballots as provided in § 7-5-202.

(3) On election day, the county clerk shall forward the following items to the election officials designated by the county board to open, process, canvass, and count absentee ballots:

(A) The absentee ballot applications sorted alphabetically or by precinct;

(B) The absentee ballots; and

(C) A written report containing the following information:

(i) The number of absentee ballot applications received by the county clerk;

(ii) The number of absentee ballots sent by the county clerk;

(iii) The number of absentee ballots returned to the county clerk;

(iv) The number of absentee ballots rejected by the county clerk and the reason for the rejection;

(v) The number of absentee ballots marked as received on the paper absentee ballot applications list; and

(vi) If the number of absentee ballots returned to the county clerk and the number of absentee ballots marked as received on the paper absentee ballot lists are different and the reason for the difference is known, the reason for the difference.

(4) The processing and counting of absentee ballots shall be open to the public, and candidates and authorized poll watchers may be present in person or by a representative designated in writing under § 7-5-312 during the opening, processing, canvassing, and counting of the absentee ballots as provided in this subchapter.

(5)(A) Absentee and early votes shall be counted prior to the closing of the polls on election day as provided under this section.

(B)(i) No later than thirty (30) minutes after the polls close on election day, the county board of election commissioners shall report by precinct the initial count of early votes and absentee ballot votes to the Secretary of State as provided under § 7-5-701.

(ii) No election results of the precinct shall be printed, posted, or released until after the polls close on election day.

(b)(1) The opening, processing, counting, and canvassing of absentee ballots shall be conducted as follows:

(A) One (1) of the election officials shall open outer absentee ballot envelopes one (1) by one (1) and verify the contents;

(B) If the required materials are properly placed in the outer absentee ballot envelope, the election official shall proceed to read aloud from the voter statement the name of the voter;

(C) If the required materials are not properly placed in the outer absentee ballot envelope, a second election official shall open the inner absentee ballot envelope to verify the contents;

(D) If all required materials are present within one (1) or the other envelope, the election officials shall put the materials in the proper envelope while preserving the secrecy of the voter's ballot and shall proceed to read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter;

(E) As each outer envelope is opened and the name of the voter is read, the election officials for the absentee box shall list in duplicate the name and voting precinct of the voter;

(F)(i) After the election official reads aloud from the statement, the election officials shall compare the name, address, date of birth, and signature of the voter's absentee application with the voter's statement and, for first-time voters who registered by mail, the first-time voter's identification document unless the voter previously provided identification at the time of mailing the voter registration application.

(ii) If the county board of election commissioners determines that the application and the voter's statement do not compare as to name, address, date of birth, and signature, the absentee ballot shall not be counted.

(iii) If a first-time voter fails to provide the required identification with the absentee ballot or at the time of mailing the voter registration application, then the absentee application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot;

(G) The election officials shall compare the name and address of the bearer, agent, or administrator written on the absentee ballot return envelope with the information on the voter statement. If the information does not match, then the outer envelope, absentee application, secrecy envelope containing the ballot, and the voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot;

(H) If the absentee voter fails to return the voter statement, the vote shall not be counted;

(I) Failure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter;

(J) If the voter statement does not authorize a bearer, agent, or administrator to receive or return his or her absentee ballot and the ballot was received or returned by a bearer, agent, or administrator, the vote shall not be counted;

(K) If no challenge is made by a qualified poll watcher, the election official shall remove the inner envelope, without opening the inner envelope containing the ballot, and place it in the ballot box without marking it in any way;

(L)(i) After all of the outer envelopes have been opened and a list has been made in duplicate of the name and voting precinct of the voters as required in this section, the election officials of the absentee box shall preserve all the statements of voters and the voters' identification documents and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for retention of other ballots.

(ii) The voter statements shall be made available for public inspection during regular business hours.

(iii) The voters' identification documents shall not be subject to public inspection except as part of a judicial proceeding to contest the election;

(M) When all of the inner envelopes containing the ballots have been placed in the ballot box, the ballot box shall be shaken thoroughly to mix the ballots; and

(N) The ballot box shall be opened and the ballots canvassed and counted.

(2) No election results shall be printed or released prior to the closing of the polls on election day.

(c) If any person casting an absentee ballot dies before the polls open on election day, his or her vote shall be accepted by the county clerk if the absentee ballot is:

(1) Signed, dated, postmarked, and mailed before the date of death;

(2) Signed, dated, and delivered to the county clerk by a designated bearer, authorized agent, or administrator before the date of death; or

(3) The ballot of a member of the armed services in active duty executed before the date of death.

(d) It is the intent of this section to require the election officials for absentee ballots to meet and process, canvass, and count absentee ballots according to this section prior to the closing of the polls on election day.

(e)(1) Absentee votes shall be cast on paper ballots.

(2)(A) The ballots shall first be counted for write-in votes by the election officials.

(B) Then, at the discretion of the county board, the ballots may be either hand counted or counted on an electronic vote tabulating device.

(f)(1) Absentee ballots marked as "special runoff ballots" received from a qualified voter from one (1) of the categories in § 7-5-406(a) shall be opened for general primary elections and general runoff elections according to the procedures described in subsection (b) of this section.

(2) However, in counting the special runoff ballot, one (1) of the election officials shall open the envelope containing the special runoff ballot and read the numbers indicated next to the names of the two (2) candidates in the general primary election or in the general runoff election.

(3) The candidate with the highest ranking shall receive the vote.

(4) A special runoff ballot received with the preferential primary absentee ballot shall be counted in the general primary election, and a

special runoff ballot received with the general election absentee ballot shall be counted in the general runoff election.

(5) The Secretary of State shall prepare instructions for opening, counting, and canvassing special runoff ballots and provide the instructions to each county board of election commissioners.

History. Acts 1969, No. 465, Art. 9, § 13; 1971, No. 261, § 21; A.S.A. 1947, § 3-913; Acts 1989, No. 505, § 1; 1993, No. 845, §§ 1-3; 1997, No. 1092, § 12; 1999, No. 1368, § 1; 2003, No. 647, §§ 3, 4; 2003, No. 994, § 12; 2003, No. 1154, § 3; 2003, No. 1744, § 1; 2005, No. 138, § 2; 2005, No. 751, § 2; 2005, No. 880, § 6; 2007, No. 261, § 2; 2007, No. 556, § 13; 2009, No. 250, § 14; 2009, No. 959, §§ 19, 20; 2013, No. 466, § 1; 2013, No. 1211, §§ 3, 4; 2013, No. 1424, § 10.

Amendments. The 2013 amendment by No. 466 rewrote (c).

The 2013 amendment by No. 1211, in (a)(5)(A), substituted “and” for “or,” “shall” for “may,” and inserted “as provided under this section”; inserted (a)(5)(B); and substituted “require” for “permit” in (d).

The 2013 amendment by No. 1424, in (a)(1), deleted “in the courthouse” following “shall meet,” and inserted “no earlier

than 8:30 a.m.”; in (a)(3), substituted “On election day, the” for “The,” and inserted “following items to the election officials designated by the county board to open, process, canvass, and count absentee ballots”; redesignated part of (a)(3) as (a)(3)(A) and inserted (a)(3)(B) and (a)(3)(C); deleted “to the election officials for absentee ballots” at the end of (a)(3)(A); in (a)(4), inserted “processing and” and substituted “authorized poll watchers” for “political parties” and “under” for “pursuant to”; redesignated former (a)(5) as present (a)(5)(A) and inserted (a)(5)(B); inserted “on election day” in (b)(2); deleted “and who is temporarily residing outside the territorial limits of the United States” following “§ 7-5-406(a)” in (f)(1); and inserted (b)(1)(G) and (b)(1)(J) and redesignated the remaining subdivisions accordingly.

7-5-418. Early voting. [Effective until contingency met.]

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, early voting shall be available to any qualified elector who applies to the county clerk’s designated early voting location, beginning fifteen (15) days before a preferential primary or general election between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. Saturday and ending at 5:00 p.m. on the Monday before the election.

(B) Early voting shall not be available on state or county holidays.

(2) However, on all other elections, including the general primary and general runoff elections, early voting shall be available to any qualified elector who applies to the county clerk during regular office hours, beginning seven (7) days before the election and ending on the day before the election day at the time the county clerk’s office regularly closes.

(b)(1)(A) The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk on any of the days and times provided for in subsection (a) of this section, if it so chooses.

(B) The county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting.

(2) The county board of election commissioners shall appoint the election officials for the additional early voting polling site or sites in the same manner as election officials are appointed for election day.

(3)(A) The county board of election commissioners shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision.

(B) If the county board of election commissioners decides to hold early voting at one (1) or more conveniently located polling sites on the days and times under subsection (a) of this section, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board within ten (10) days of the receipt of notice from the county board of election commissioners regarding early voting at additional polling sites.

(4) The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) All voted ballots and unvoted ballots and all related election materials at each additional early voting polling site shall be stored in a secure location in the county courthouse or in a secure location as determined by the county board of election commissioners immediately after the close of the additional polling sites each day that early voting is conducted there.

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(3) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(4) Enter the voter's precinct number on the early voting roster or early voting request form.

(d) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter's registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter's registration status.

(e) The county clerk or county board of election commissioners shall furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot.

(f) Except as provided in this section, early voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted.

(g)(1) The county clerk shall electronically record in the permanent voter registration record of an elector who voted at an early voting location to indicate that the elector has voted.

(2) Except as provided under subdivision (g)(3) of this section, the county clerk shall electronically record in the permanent voter registration record no later than twenty-four (24) hours after the elector has voted.

(3) If the elector votes on a Friday or Saturday, the county clerk shall electronically record in the permanent voter registration record no later than the close of business on the Monday following the vote.

History. Acts 1995, No. 686, § 7; 1995, No. 948, § 7; 1997, No. 967, § 1; 1997, No. 1092, § 14; 2003, No. 269, § 1; 2005, No. 655, § 1; 2005, No. 880, § 8; 2005, No. 1690, § 1; 2007, No. 556, § 15; 2007, No. 987, § 1; 2009, No. 375, § 3; 2009, No. 959, § 21; 2013, No. 979, § 1; 2013, No. 1059, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2013, No. 1059. Acts 2013, No. 979 added a new subsection to read as follows:

“(g)(1) The county clerk shall electronically record in the permanent voter registration record of an elector who voted at an early voting location to indicate that

the elector has voted.

“(2) Except as provided under subdivision (g)(3) of this section, the county clerk shall electronically record in the permanent voter registration record no later than twenty-four (24) hours after the elector has voted.

“(3) If the elector votes on a Friday or Saturday, the county clerk shall electronically record in the permanent voter registration record no later than the close of business on the Monday following the vote.”

Amendments. The 2013 amendment by No. 1059 added (g).

7-5-418. Early voting. [Contingent effective date.]

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, early voting shall be available to any qualified elector who applies to the county clerk’s designated early voting location, beginning fifteen (15) days before a preferential primary or general election between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. Saturday and ending at 5:00 p.m. on the Monday before the election.

(B) Early voting shall not be available on state or county holidays.

(2) However, on all other elections, including the general primary and general runoff elections, early voting shall be available to any qualified elector who applies to the county clerk during regular office hours, beginning seven (7) days before the election and ending on the day before the election day at the time the county clerk’s office regularly closes.

(b)(1)(A) The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk on any of the days and times provided for in subsection (a) of this section, if it so chooses.

(B) The county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting.

(2) The county board of election commissioners shall appoint the election officials for the additional early voting polling site or sites in the same manner as election officials are appointed for election day.

(3)(A) The county board of election commissioners shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision.

(B) If the county board of election commissioners decides to hold early voting at one (1) or more conveniently located polling sites on the days and times under subsection (a) of this section, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board within ten (10) days of the receipt of notice from the county board of election commissioners regarding early voting at additional polling sites.

(4) The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) All voted ballots and unvoted ballots and all related election materials at each additional early voting polling site shall be stored in a secure location in the county courthouse or in a secure location as determined by the county board of election commissioners immediately after the close of the additional polling sites each day that early voting is conducted there.

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) Request the voter to present proof of identity to the county clerk or election official;

(3) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(4) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form; and

(5) Enter the voter's precinct number on the early voting roster or early voting request form.

(d)(1) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter's registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter's registration status.

(2)(A) If the voter fails to provide proof of identity, the election official shall follow the procedure in § 7-5-321.

(B)(i) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide proof of identity before voting.

(ii) A person not required to provide proof of identity under subdivision (d)(2)(B)(i) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(e) The county clerk or county board of election commissioners shall furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot.

(f) Except as provided in this section, early voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted.

(g)(1) The county clerk shall electronically record in the permanent voter registration record of an elector who voted at an early voting location to indicate that the elector has voted.

(2) Except as provided under subdivision (g)(3) of this section, the county clerk shall electronically record in the permanent voter registration record no later than twenty-four (24) hours after the elector has voted.

(3) If the elector votes on a Friday or Saturday, the county clerk shall electronically record in the permanent voter registration record no later than the close of business on the Monday following the vote.

History. Acts 1995, No. 686, § 7; 1995, No. 948, § 7; 1997, No. 967, § 1; 1997, No. 1092, § 14; 2003, No. 269, § 1; 2005, No. 655, § 1; 2005, No. 880, § 8; 2005, No. 1690, § 1; 2007, No. 556, § 15; 2007, No. 987, § 1; 2009, No. 375, § 3; 2009, No. 959, § 21; 2013, No. 595, § 6; 2013, No. 979, § 1; 2013, No. 1059, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2013, No. 1059. Acts 2013, No. 979 added a new subsection to read as follows:

“(g)(1) The county clerk shall electronically record in the permanent voter registration record of an elector who voted at an early voting location to indicate that the elector has voted.

“(2) Except as provided under subdivision (g)(3) of this section, the county clerk shall electronically record in the permanent voter registration record no later than twenty-four (24) hours after the elec-

tor has voted.

“(3) If the elector votes on a Friday or Saturday, the county clerk shall electronically record in the permanent voter registration record no later than the close of business on the Monday following the vote.”

Amendments. The 2013 amendment by No. 595 inserted (c)(2) and redesignated the remaining subdivisions accordingly; redesignated former (d) as (d)(1); and added (d)(2).

The 2013 amendment by No. 1059 added (g).

Effective Dates. Acts 2013, No. 595, § 7, provided: “This act shall become effective upon the later of the following:

“(1) January 1, 2014; or

“(2) The appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.”

SUBCHAPTER 5 — VOTING MACHINES

SECTION.

7-5-532. Direct-recording electronic voting machines.

7-5-532. Direct-recording electronic voting machines.

(a) For purposes of this section:

(1) “Direct-recording electronic voting machine” means a voting machine that:

(A) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

(B) Processes the data by means of a computer program;

(C) Records voting data and ballot images in internal or external memory components; and

(D) Produces a tabulation of the voting data stored in a removable memory component and in a printed copy; and

(2) “Voter-verified paper audit trail” means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot.

(b) The Secretary of State or the county shall not purchase or procure a direct-recording electronic voting machine that does not include a voter-verified paper audit trail.

(c)(1) All direct-recording electronic voting machines in use on or after January 1, 2006, shall include a voter-verified paper audit trail, except for those direct-recording electronic voting machines in use during the 2004 general election.

(2) All direct-recording electronic voting machines purchased on or after August 12, 2005, shall include a voter-verified paper audit trail.

(d) A direct-recording electronic voting machine with a voter-verified paper audit trail shall meet the following conditions:

(1) The voter-verified paper audit trail may be verified by the voter before the casting of the voter’s ballot;

(2) The voter-verified paper audit trail shall not be retained by the voter;

(3) The voter-verified paper audit trail shall not contain individual voter information;

(4) The paper used in producing the voter-verified paper audit trail shall be sturdy, clean, and resistant to degradation; and

(5) The voter-verified paper audit trail shall be readable in a manner that makes the voter’s ballot choices obvious to the voter without the use of computer or electronic code.

(e) Voter-verified paper audit trails shall be preserved in the same manner and for the same time period that ballots and certificates are preserved under § 7-5-702.

History. Acts 2005, No. 654, § 2; 2007, No. 835, § 7; 2009, No. 959, § 28; 2013, No. 1126, § 6.

Amendments. The 2013 amendment substituted “Direct-recording” for “Direct” in the introductory language of (a)(1).

SUBCHAPTER 6 — PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES

7-5-601. Paper ballots — Form.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for United States Senate on Ballot. 59 A.L.R.6th 111.

SUBCHAPTER 7 — RETURNS AND CANVASS

SECTION.

7-5-701. Declaration of results — Certification, delivery, and custody of returns.

7-5-702. Preservation of ballots, stubs,

SECTION.

certificates, and other election materials.

7-5-707. Vote certification.

7-5-701. Declaration of results — Certification, delivery, and custody of returns.

(a)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board of election commissioners, from the certificates and ballots received from the several precincts, shall proceed to ascertain, declare, and certify the result of the election to the Secretary of State.

(2)(A) As results are received and tabulated on election night for all state and federal elections, the county board of election commissioners shall declare preliminary and unofficial results of the election as soon as early voting, absentee, or individual precinct results are tabulated on election night and immediately shall transmit the results by precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(B) The county board of election commissioners may, by agreement with the county clerk, transmit the results to the county clerk who immediately shall transmit the results by precinct to the Secretary of State as described under subdivision (2)(A) of this section.

(C) On election night for all state and federal elections, immediately after the count of the vote is complete, the county board of election commissioners shall:

(i) Declare preliminary and unofficial results of the election, including a statement of the number of outstanding:

(a) Ballots of voters who requested ballots under the Uniformed and Overseas Citizens Absentee Voting Act; and

(b) Provisional ballots; and

(ii) Immediately transmit the results by precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(D) The county board of election commissioners may, by agreement with the county clerk, transmit the results to the county clerk who

shall immediately transmit the results by precinct to the Secretary of State as described in subdivision (2)(C) of this section.

(E) The Secretary of State may establish policies and procedures to accomplish the objectives set forth under this section.

(3) Within nineteen (19) calendar days after any general, special, or school election, the county board shall deliver a certificate of election to the person having the highest number of legal votes for any county office.

(b) The county board shall also file in the office of the clerk of the county court a certificate setting forth in detail the result of the election in each precinct.

(c)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board shall deposit certified copies of the abstracts of the returns of the election for members of Congress and for all executive, legislative, and judicial officers in the nearest post office on the most direct route to the seat of government and directed to the Secretary of State.

(2) The county board shall not receive compensation for election duties after the election until the election results have been certified and delivered to the Secretary of State.

(3) The Secretary of State shall file a complaint with the State Board of Election Commissioners pursuant to § 7-4-118 if the county board does not comply with subdivision (c)(1) of this section.

(d)(1) It shall at the same time enclose in a separate envelope and direct to the Speaker of the House of Representatives, in care of the Secretary of State, at the seat of government, a certified copy of the abstract of votes given for Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General.

(2) It is made the duty of the Secretary of State to safely keep the returns addressed to the Speaker of the House of Representatives until they shall be required for the purpose of ascertaining and declaring the result of the election as prescribed in Arkansas Constitution, Article 6, § 3.

History. Acts 1969, No. 465, Art. 8, § 1; § 1; 2005, No. 1677, § 5; 2013, No. 1058, 1971, No. 261, § 14; A.S.A. 1947, § 3-801; § 1; 2013, No. 1211, § 5.
Amendments. The 2013 amendment by No. 1058 rewrote (a)(2).
 The 2013 amendment by No. 1211 added "in each precinct" in (b).
 Acts 1993, No. 512, § 3; 1993, No. 966, § 1; 1995, No. 441, § 1; 1995, No. 723, § 1; 1995, No. 724, § 1; 1999, No. 1304, § 1; 2001, No. 1475, § 1; 2003, No. 131, § 1; 2005, No. 731, § 1; 2005, No. 895,

7-5-702. Preservation of ballots, stubs, certificates, and other election materials.

(a) After the election has been finally certified by the county board of election commissioners, the county board of election commissioners shall retain the custody of and safely keep in a sealed container appropriately marked in a secure location in the county courthouse or other county storage facility all ballots and certificates returned to it

from the several precincts for a period of twenty (20) days, after which time the ballots and certificates shall be stored in a secure location in the county courthouse or other county storage facility for a period of two (2) years from the date of the election, unless the county board of election commissioners shall be sooner notified in writing that:

(1) The election of some person voted for at the election and declared to have been elected has been contested; or

(2) Criminal prosecution has begun before a tribunal of competent jurisdiction against any officer of election or person voting thereat for any fraud in the election.

(b) If the county board of election commissioners is notified as provided in subsection (a) of this section, then so many of the ballots and certificates as may relate to matters involved in the contest or any prosecution shall be preserved for use as evidence in the contest or prosecution.

(c) During the time the ballots may be retained or stored, the package containing them shall not be opened by anyone unless directed to do so by some competent tribunal before which an election contest or prosecution is pending in which the ballots are to be used as evidence.

(d) For twenty (20) days, the county treasurer shall retain the custody of ballot stubs in an appropriately marked, sealed container delivered to him or her from the several precincts, after which time they shall be stored in a secure location in the county courthouse or other county storage facility unless an election contest has been filed or a criminal prosecution has been initiated in connection with the election.

(e) After a period of two (2) years, all marked ballots and ballot stubs may be destroyed in the following manner:

(1) The county board of election commissioners shall enter an order directing the destruction of marked ballots and ballot stubs;

(2) The county board of election commissioners shall make and retain a record of marked ballots and ballot stubs destroyed; and

(3) The county board shall file with the county clerk the order and record pertaining to marked ballots and ballot stubs destroyed.

History. Acts 1969, No. 465, Art. 8, § 2; A.S.A. 1947, § 3-802; Acts 1987, No. 492, § 1; 1997, No. 446, § 33; 2005, No. 953, § 1; 2005, No. 2233, § 47; 2009, No. 959, § 31; 2013, No. 236, § 2.

Amendments. The 2013 amendment

rewrote (d); inserted “and ballot stubs” in (e), (e)(1) and (e)(2); and, in (e)(3), inserted “with the county clerk” following “board shall file” and deleted “with the county clerk” at the end.

7-5-703. Votes for United States Congress — Tie vote.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

7-5-704. Votes for legislative, judicial, and executive officers — Tie vote.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

7-5-707. Vote certification.

(a) For all state and federal elections, the county board of election commissioners shall transmit the certified results for each precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(b) The county board may, by agreement with the county clerk, transmit the certified results to the county clerk who shall transmit the certified results by precinct to the Secretary of State as described in subsection (a) of this section.

(c) The Secretary of State may require a county board of election commissioners to submit additional election information as determined by the Secretary of State.

History. Acts 2001, No. 1396, § 1; 2003, No. 131, § 2; 2003, No. 994, § 13; 2005, No. 67, § 14; 2007, No. 559, § 5; 2009, No. 959, § 33; 2011, No. 1238, § 1; 2013, No. 1058, § 2; 2013, No. 1126, § 7.

Amendments. The 2013 amendment by No. 1058, in (a), substituted “precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State” for “polling place to

the county clerk, who shall immediately transmit the results to the Secretary of State through the Internet website interface provided by the Secretary of State”; inserted (b) and redesignated former (b) as (c).

The 2013 amendment by No. 1126 deleted “Internet” following “State through the” in (a).

SUBCHAPTER 8 — ELECTION CONTESTS

SECTION.

7-5-801.. Right of action — Procedure.

7-5-801. Right of action — Procedure.

(a) A right of action is conferred on any candidate to contest the certification of nomination or the certificate of vote as made by the appropriate officials in any election.

(b) The action shall be brought in the circuit court of the county in which the certification of nomination or certificate of vote is made when a county or city or township office, including the office of county delegate or county committeeman, is involved, and except as provided in this subchapter, within any county in the circuit or district wherein any of the wrongful acts occurred when any circuit or district office is involved, and except as provided in this subchapter, in the Pulaski County Circuit Court when the office of United States Senator or any state office is involved.

(c) If there are two (2) or more counties in the district where the action is brought and when fraud is alleged in the complaint, answer, or cross-complaint, the circuit court may hear testimony in any county in the district.

(d) The complaint shall be verified by the affidavit of the contestant to the effect that he or she believes the statements to be true and shall be filed within twenty (20) days of the certification that is the subject of the complaint.

(e) The complaint shall be answered within twenty (20) days.

History. Acts 1969, No. 465, Art. 10, § 1; A.S.A. 1947, § 3-1001; Acts 2013, No. 1126, § 8.

Amendments. The 2013 amendment substituted “that is the subject of the complaint” for “complained of” in (d).

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Statutory Limitations Pe-

riods Governing Election Contests. 60 A.L.R.6th 481.

CHAPTER 6

CAMPAIGN PRACTICES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. CAMPAIGN FINANCING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

7-6-102. Political practices pledge — Penalty for falsification

7-6-102. Political practices pledge — Penalty for falsification

(a)(1) Candidates for political party nominations for state or district offices shall file with the Secretary of State and candidates for county, municipal, or township offices shall file with the county clerk of the county during the filing period set out in § 7-7-203 for the preferential primary election a pledge in writing stating that they are familiar with the requirements of §§ 7-1-103, 7-1-104, 7-3-108, 7-6-101, 7-6-103, 7-6-104, and this section and will comply in good faith with their terms.

(2) An independent candidate or school district candidate shall file the political practices pledge at the time of filing the petition for nomination.

(3) Independent candidates for municipal office shall file the political practices pledge with the county clerk at the time of filing the petition for nomination.

(4) Write-in candidates shall file the political practices pledge at the time of filing the notice to be a write-in candidate.

(5) A nonpartisan candidate paying filing fees in accordance with § 7-10-103(b) shall file the political practices pledge at the time of filing for office.

(6) A nonpartisan candidate filing by petition according to § 7-10-103(c) shall file the political practices pledge at the time of filing the petition.

(b) All political practices pledge forms for state or district offices and county, municipal, or township offices shall contain the following additional pledge:

“I hereby certify that I have never been convicted of a felony in Arkansas or in any other jurisdiction outside of Arkansas.”

(c) Any person who has been convicted of a felony and signs the pledge stating that he or she has not been convicted of a felony shall be guilty of a Class D felony.

(d) For purposes of this section, a person shall be qualified to be a candidate for a state, district, county, municipal, and township office and may certify that he or she has never been convicted of a felony if his or her record was expunged in accordance with §§ 16-93-301 — 16-93-303, or a similar expunction statute in another state if the candidate presents a certificate of expunction from the court that convicted the candidate.

(e)(1) The name of a candidate who fails to sign and file the pledge shall not appear on the ballot.

(2)(A) Within two (2) days of the date the pledge is required to be filed, the Secretary of State or the county clerk shall notify by certified mail that requires a return receipt signed by the candidate those candidates who have failed to file a signed political practice pledge and include a copy of the written pledge required by this section.

(B) Failure of the state or district candidate to file with the Secretary of State or of the county, municipal, or township candidate to file with the county clerk within five (5) days of receipt or refusal of this notice shall prevent the candidate’s name from appearing on the ballot.

History. Acts 1969, No. 465, Art. 11, § 3; 1970 (Ex. Sess.), No. 27, § 1; 1972 (Ex. Sess.), No. 37, § 3; 1972 (Ex. Sess.), No. 42, § 3; 1983, No. 244, § 1; A.S.A. 1947, §§ 3-1103, 3-1103.1; Acts 1987, No. 248, § 10; 1989, No. 755, § 1; 1989, No. 912, § 3; 1995, No. 665, § 2; 1997, No. 886, § 1; 2003, No. 542, § 1; 2003, No. 1731, § 2; 2005, No. 67, § 15; 2007, No. 222, § 1; 2007, No. 1049, § 20; 2013, No. 1110, § 6.

Amendments. The 2013 amendment rewrote the section.

SUBCHAPTER 2 — CAMPAIGN FINANCING

SECTION.

7-6-201. Definitions.

7-6-202. Penalties.

7-6-203. Contributions — Limitations — Acceptance or solicitation

SECTION.

— Use as personal income
— Disposition.

7-6-207. Reports of contributions — Candidates for office other

SECTION.

than school district, township, municipal, or county office, etc.

7-6-208. Reports of contributions — Candidates for school district, township, or municipal office.

SECTION.

7-6-209. Reports of contributions — Candidates for county office.

7-6-216. Registration and reports by exploratory committees.

7-6-218. Citizen complaints.

7-6-223. Reports of contributions by political parties.

7-6-201. Definitions.

As used in this subchapter:

(1)(A) “Approved political action committee” means any person that:

(i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees;

(ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(iii) Registers pursuant to § 7-6-215 prior to making contributions.

(B) “Approved political action committee” does not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate’s own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee as defined in § 7-9-402;

(2) “Candidate” means any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office;

(3) “Carryover funds” means the amount of campaign funds retained from the last election by the candidate for future use but not to exceed the annual salary, excluding expense allowances, set by Arkansas law for the office sought;

(4)(A) “Contribution” means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, or pledges or promises of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office made for the purpose of influencing the nomination or election of any candidate.

(B)(i) “Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under this subchapter.

(ii) "Contribution" further includes any transfer of anything of value received by a committee from another committee.

(C) "Contribution" shall not include noncompensated, nonreimbursed, volunteer personal services or travel;

(5) "Contribution and expenditure" shall not include activity sponsored and funded by a political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate;

(6) "County political party committee" means a person that:

(A) Is organized at the county level for the purpose of supporting its affiliate party and making contributions;

(B) Is recognized by an organized political party, as defined in § 7-1-101, as being affiliated with that political party;

(C) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, political action committees, or other county political party committees;

(D) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(E) Registers pursuant to § 7-6-226 prior to making contributions;

(7) "Election" means each election held to nominate or elect a candidate to any public office, including school elections. For the purposes of this subchapter, a preferential primary, a general primary, a special election, and a general election shall each constitute a separate election;

(8) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate;

(9)(A) "Exploratory committee" means a person that receives contributions which are held to be transferred to the campaign of a single candidate in an election.

(B) "Exploratory committee" shall not include:

(i) A political party:

(a) That meets the definition of a political party under § 7-1-101; or

(b) A political party that meets the requirements of § 7-7-205; or

(ii) The candidate's own campaign committee;

(10) "Financial institution" means any commercial bank, savings and loan, mutual savings bank or savings bank, insurance company

brokerage house, or any corporation that is in the business of lending money and that is subject to state or federal regulation;

(11) "Independent expenditure" means an expenditure which is not a contribution and:

(A) Expressly advocates the election or defeat of a clearly identified candidate for office;

(B) Is made without arrangement, cooperation, or consultation between a candidate or an authorized committee or agent of the candidate and the person making the expenditure or an authorized agent of that person; and

(C) Is not made in concert with or at the request or suggestion of a candidate or an authorized committee or agent of the candidate;

(12) "Independent expenditure committee" means any person that receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to § 7-6-227 prior to making expenditures;

(13)(A) "Legislative caucus committee" means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common.

(B) "Legislative caucus committee" includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives.

(C) An organization whose only nonlegislator member is the Lieutenant Governor or the Governor is a "legislative caucus committee" for the purposes of this subchapter;

(14)(A) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" shall also include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

(ii) A county political party committee; and

(iii) A legislative caucus committee;

(15)(A) "Prohibited political action committee" means any person that receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees but that does not meet the requirements of an approved political action committee.

(B) "Prohibited political action committee" shall not include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

- (ii) The candidate's own campaign committee;
 - (iii) A county political party committee;
 - (iv) An exploratory committee; or
 - (v) A ballot or legislative question committee;
- (16) "Public office" means any office created by or under authority of the laws of the State of Arkansas or of a subdivision thereof that is filled by the voters, except a federal office;
- (17) "Surplus campaign funds" means any balance of campaign funds over expenses incurred as of the day of the election except for:
- (A) Carryover funds; and
 - (B) Any funds required to repay loans made by the candidate from his or her personal funds to the campaign or to repay loans made by financial institutions to the candidate and applied to the campaign; and
- (18)(A) "Written instrument" means a check on which the contributor is directly liable or which is written on a personal account, trust account, partnership account, business account, or other account that contains the contributor's funds.
- (B) As used in § 7-6-204 in the case of a contribution by credit card or debit card, "written instrument" includes without limitation:
- (i) A paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution:
 - (a) Valid name;
 - (b) Complete address;
 - (c) Place of business;
 - (d) Employer; and
 - (e) Occupation; or
 - (ii) In the case of a contribution made through the Internet, an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder at the time of making the contribution:
 - (a) Valid name;
 - (b) Complete address;
 - (c) Place of business;
 - (d) Employer; and
 - (e) Occupation.

History. Acts 1975, No. 788, § 1; 1977, No. 312, §§ 4, 7; A.S.A. 1947, § 3-1109; Acts 1987, No. 246, § 1; Init. Meas. 1990, No. 1, § 1; Acts 1993, No. 1209, § 2; Init. Meas. 1996, No. 1, § 1; Acts 1997, No. 491, § 1; 1999, No. 553, § 2; 2003, No. 195, § 1; 2005, No. 1284, § 2; 2005, No. 2006, § 1; 2009, No. 473, § 2; 2009, No. 1204,

§ 1; 2011, No. 721, § 2; 2013, No. 1126, §§ 9, 10.

Amendments. The 2013 amendment by No. 1126, in (1)(B), substituted "does" for "shall" and inserted "question committee"; and, in (11), substituted "Independent" for "An independent" and "means an" for "is any."

7-6-202. Penalties.

A person who knowingly fails to comply with this subchapter shall upon conviction be guilty of a Class A misdemeanor.

History. Acts 1975, No. 788, § 10; deleted “or willfully” following “knowingly” and “any provisions of” following “comply with.”
A.S.A. 1947, § 3-1118; Acts 2005, No. 1994, § 224; 2013, No. 1126, § 11.

Amendments. The 2013 amendment

7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition.

(a)(1)(A) It shall be unlawful for any candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions in excess of two thousand dollars (\$2,000) per election from any person.

(B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate's behalf to accept campaign contributions in excess of two thousand dollars (\$2,000) per election from any person.

(B) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor for each election, whether opposed or unopposed.

(b)(1)(A) It shall be unlawful for any person to make a contribution to a candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election.

(B) A person may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(2)(A) It shall be unlawful for any person to make a contribution to a candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or to any person acting on the candidate's behalf, which in the aggregate exceeds two thousand dollars (\$2,000) per election.

(B) A person may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(c) The limitation shall not apply to loans made by a candidate from his or her own personal funds to the campaign, contributions made by

a candidate from his or her personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign.

(d) However, an organized political party as defined in § 7-1-101 may contribute up to two thousand five hundred dollars (\$2,500) to each of the party's candidates per election.

(e)(1) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election.

(2) It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

(3) It shall be unlawful for any ballot question committee, legislative question committee, political party, county political party committee, or approved political action committee to accept any contribution from a prohibited political action committee.

(4) It shall be unlawful for any prohibited political action committee to make a contribution to:

- (A) A ballot question committee;
- (B) A legislative question committee;
- (C) A political party;
- (D) A county political party committee; or
- (E) An approved political action committee.

(f) It shall be unlawful for any candidate for public office, any person acting in the candidate's behalf, or any exploratory committee to solicit or accept campaign contributions more than two (2) years before an election at which the candidate seeks nomination or election. This subsection shall not prohibit the solicitation or acceptance of a contribution for the sole purpose of raising funds to retire a previous campaign debt.

(g)(1) A candidate shall not take any campaign funds as personal income. This subdivision (g)(1) shall not apply to campaign funds that were:

- (A) Accumulated prior to the passage of Initiated Act 1 of 1990; or
- (B) Disposed of prior to July 28, 1995.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers; and

(B) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of such leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (g)(2) of this section may elect to treat the campaign

funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4)(A) For purposes of this subsection, a candidate who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign shall be deemed to have taken campaign funds as personal income.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(D) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.

(h)(1) Within thirty (30) days following the end of the month in which an election is held or a candidate has withdrawn, a candidate shall turn over surplus campaign funds to either:

(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;

(C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(D) Cities of the first class, cities of the second class, or incorporated towns; or

(E) The contributors to the candidate's campaign.

(2) If the candidate's campaign has not ended, disposal of surplus campaign funds shall not be required and the candidate may carry forward any remaining funds to the general primary election, general election, or general runoff election for that same office.

(3)(A) If an unopposed candidate agrees not to solicit further campaign contributions by filing an affidavit declaring such an agreement, the candidate may dispose of any surplus campaign funds prior to a general election as soon as the time has passed to declare an intent to be a write-in candidate pursuant to § 7-5-205.

(B) For an unopposed nonpartisan candidate, the affidavit may be filed after the deadlines have passed to declare as a filing fee candidate, petition candidate, or write-in candidate under § 7-10-103.

(C) The affidavit shall be filed in the office in which the candidate is required to file reports of contributions received and expenditures made.

(D) Unopposed candidates and defeated candidates who file the affidavit are exempt from further reporting requirements provided that the affidavit contains:

- (i) All campaign activity not previously reported; and
- (ii) A statement that the candidate's campaign fund has a zero (\$0.00) balance.

(4)(A) Carryover funds may be expended at any time for any purpose not prohibited by this chapter and may be used as campaign funds for seeking any public office. Nothing shall prohibit a person at any time from disposing of all or any portion of his or her carryover funds in the same manner as for surplus campaign funds. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(B)(i) When a person having carryover funds files as a candidate for public office, his or her carryover funds shall be transferred to the person's active campaign fund. Once transferred, the funds will no longer be treated as carryover funds.

(ii) This subdivision (h)(4)(B) shall not apply to carryover funds from an election held prior to July 1, 1997.

(iii) This subdivision (h)(4)(B) shall not apply to a campaign debt.

(C)(i) If carryover funds are expended prior to transferring the funds to an active campaign fund, the expenditures shall be reported pursuant to this subdivision (h)(4)(C). A person shall file an expenditure report concerning carryover funds if, since the last report concerning the carryover funds, the person has expended in excess of five hundred dollars (\$500). The report shall be filed at the office in which the candidate was required to file his or her campaign contribution and expenditure reports for the previous campaign not later than fifteen (15) days after a calendar quarter in which a report becomes required. No report is required in any calendar quarter in which the cumulative expenditure limit has not been exceeded since the person's last report.

(ii) The person shall also file an expenditure report for the calendar quarter in which he or she transfers the carryover funds to an active campaign fund.

(iii) A person who retains carryover funds shall file an annual report outlining the status of the carryover fund account as of December 31 unless the person has filed a quarterly report during the calendar year pursuant to subdivisions (h)(4)(C)(i) and (ii) of this section. The annual report shall be due by January 31 of each year.

(iv) The carryover fund reports of a candidate for school district, township, municipal, or county office shall be filed with the county clerk of the county in which the election was held.

(v) The carryover fund reports of a candidate for state or district office shall be filed with the Secretary of State.

(D)(i) Carryover funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last

day that the person held office, and any remaining carryover funds shall be disposed of in the same manner as for surplus campaign funds.

(ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (h)(4)(D) prior to the expiration of the ten-year period.

(b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.

(5) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(6) Surplus campaign funds or carryover funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution; or

(B) To provide any personal income to any candidate who donated surplus campaign funds or carryover funds.

(i) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

History. Acts 1975, No. 788, § 2; 1977, No. 312, § 6; 1981, No. 690, § 1; A.S.A. 1947, § 3-1110; Init. Meas. 1990, No. 1, §§ 2, 3; Acts 1993, No. 1195, § 1; 1993, No. 1196, § 1; 1995, No. 863, §§ 1-3; 1995, No. 1296, § 41; Init. Meas. 1996, No. 1, §§ 2, 3; Acts 1997, No. 116, § 1; 1997, No. 491, §§ 2, 3; 1999, No. 553, § 3; 1999, No. 1057, § 1; 2001, No. 954, § 1; 2001, No. 1839, § 2; 2003, No. 195, §§ 2, 3; 2003, No. 248, § 1; 2005, No. 1284, §§ 3, 4;

2005, No. 1413, § 1; 2005, No. 1695, § 1; 2007, No. 221, § 2; 2009, No. 340, § 1; 2009, No. 473, §§ 3, 4; 2009, No. 1204, § 2; 2011, No. 721, §§ 3, 4; 2013, No. 382, § 1; 2013, No. 1110, § 7.

Amendments. The 2013 amendment by No. 382 added (g)(4)(D).

The 2013 amendment by No. 1110, in (h)(3)(B), inserted “an,” deleted “candidates for” following “unopposed” and substituted “candidate” for “judicial office.”

RESEARCH REFERENCES

ALR. Construction and Application of Supreme Court’s Holding in *Citizens United v. Federal Election Com’n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 2010 U.S. LEXIS 766, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Pro-

hibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

Constitutional Challenges to Compelled Speech — Particular Situations or Circumstances. 73 A.L.R.6th 281.

7-6-205. Contributions made indirectly, anonymously, or under assumed names.

RESEARCH REFERENCES

ALR. Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 2010 U.S. LEXIS 766, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

7-6-207. Reports of contributions — Candidates for office other than school district, township, municipal, or county office, etc.

(a) **REPORTS REQUIRED.**

(1) Except as provided in subsection (c) of this section, each candidate for office, other than a school district, township, municipal, or county office, or a person acting in the candidate's behalf, shall file with the Secretary of State:

(A) For each quarter during a calendar year in which a candidate is not listed on any ballot for election, a quarterly report of all contributions received and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter;

(B) Beginning with the month of January in the calendar year in which a candidate may be listed on any ballot for election, a monthly report of all contributions received and expenditures made during that month. However, for any month in which certain days of that month are included in a preelection report required under subdivision (a)(1)(C) of this section or a final report required under subdivision (a)(1)(D) of this section, no monthly report for that month shall be due. In the case of a primary or runoff election, those days of the month occurring after the date of the election shall be carried forward and included in the next monthly report. The monthly report shall be filed no later than fifteen (15) days after the end of each month, except that the final report, covering the month during which an election is held, shall be filed within thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination and after the end of the month in which the general election is held. With respect to a special election, the candidate shall file monthly reports under this section beginning with the month in which the special election candidate's total campaign contributions or expenditures exceed five hundred dollars (\$500);

(C) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election. In case of a runoff election, the report shall cover all

contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(D) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any primary election, runoff election, general election, or special election, a final report of all contributions received and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500); and

(E)(i) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(ii) If a candidate withdraws from the campaign, the candidate shall notify the Secretary of State in writing of the withdrawal.

(2) Upon receiving the first report from any candidate, or upon receipt of the candidate's notice of filing for office, the Secretary of State shall provide the candidate with information on the deadlines for filing remaining quarterly, monthly, and preelection reports and shall furnish each candidate with the appropriate forms and instructions for complying with the deadlines. All reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the Arkansas Ethics Commission provided that all of the requisite elements are included.

(3) For any report except a preelection report, a report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due. A preelection report is timely filed if it is received in the Secretary of State's office no later than seven (7) days prior to the election for which it is filed. The Secretary of State shall accept via facsimile any report, provided the original is received by the Secretary of State within ten (10) days of the date of transmission. The Secretary of State may receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the commission.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the:

(i) Amount of the expenditure;

(ii) Name and address of any person, including the candidate, to whom the expenditure was made; and

(iii) Date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i)(a) Television;

(b) Radio;

(c) Print; and

(d) Other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds shall not be required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(c) REPORTS NOT REQUIRED.

(1) The candidate or any person acting in the candidate's behalf shall comply with the filings required by this section beginning with the first reporting period, either quarterly, monthly, or preelection, in which his or her total contributions or expenditures exceed five hundred dollars (\$500). A candidate who has not received contributions or made

expenditures in excess of five hundred dollars (\$500) shall not be required to file any reports required under this section other than the final report required under subdivision (a)(1)(B) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1)(C) of this section are only required for candidates with opponents in those elections.

(3) An unopposed candidate for an office described in subdivision (a)(1) of this section or any person acting in the unopposed candidate's behalf shall not be required to file the ten-day preelection report required by subdivision (a)(1)(C) of this section.

(d) FILINGS AND PUBLIC INSPECTION.

(1)(A) The Secretary of State shall establish a filing system for reports filed pursuant to this section. The reports shall be kept for eight (8) years from the date of filing, catalogued by candidate in chronological order, and made available for public inspection.

(B) After the eight-year period, the Secretary of State shall turn the reports over to the Arkansas History Commission for maintenance and continued public inspection.

(2) The Secretary of State shall furnish to the Arkansas Ethics Commission, no later than thirty (30) days after each filing deadline under this section, a report listing the names of all candidates who have filed for office, the type of report filed by each candidate, and the date the report was received by the Secretary of State.

History. Acts 1975, No. 788, § 3; 1977, No. 312, § 1; 1985, No. 896, §§ 1-3; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; Init. Meas. 1990, No. 1, § 5; Acts 1993, No. 1243, § 1; 1995, No. 1263, § 1; Init. Meas. 1996, No. 1, § 4; Acts 1999, No. 103, § 1; 1999, No. 553, § 6; 2001, No. 564, § 1; 2001, No. 1839, §§ 3, 4; 2007, No. 221, § 5; 2009, No. 1204, § 3; 2011, No. 721, § 6; 2013, No. 382, §§ 2, 3.

Amendments. The 2013 amendment substituted "general election, or special election" for "or general election" in (a)(1)(D); and added "for the entire election cycle" at the end of (b)(1)(A).

7-6-208. Reports of contributions — Candidates for school district, township, or municipal office.

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for school district, township, or municipal office, or a person acting in the candidate's behalf, shall:

(1) No later than seven (7) days prior to any preferential primary election, runoff election, general election, school election, or special election in which the candidate's name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during

that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(2) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, school election, or special election, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(3) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report. The supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and

(4)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i)(a) Television;

- (b) Radio;
- (c) Print; and
- (d) Other advertising;
- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Rent;
- (v) Travel;
- (vi) Expenses;
- (vii) Entertainment; and
- (viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) **FILING OF REPORTS.** The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.**

(1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

History. Acts 1975, No. 788, § 3; 1977, 1987, No. 246, § 2; 1993, No. 1243, § 2; No. 312, § 1; A.S.A. 1947, § 3-1111; Acts Init. Meas. 1996, No. 1, § 5; Acts 1999,

No. 553, §§ 7-9; 2001, No. 1839, § 5; **Amendments.** The 2013 amendment
 2003, No. 195, § 4; 2007, No. 221, § 6; added “for the entire election cycle” at the
 2009, No. 1204, § 4; 2011, No. 721, § 7; end of (b)(1)(A).
 2013, No. 382, § 4.

7-6-209. Reports of contributions — Candidates for county office.

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for county office or a person acting in the candidate’s behalf shall:

(1) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate’s name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(2) No later than thirty (30) days after the end of the month in which the candidate’s name has appeared on the ballot in any preferential primary election, runoff election, general election, or special election, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(3) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure; and

(4)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal.

(b) **CONTENTS OF REPORTS.**

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor’s principal place of business, employer, occupation, the amount contributed, the date the contribution was ac-

cepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmonetary item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

- (i)(a) Television;
- (b) Radio;
- (c) Print; and
- (d) Other advertising;
- (ii) Direct mail;
- (iii) Office supplies;
- (iv) Rent;
- (v) Travel;
- (vi) Expenses;
- (vii) Entertainment; and
- (viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(h) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3).

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining funds in the campaign to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) FILING OF REPORTS. The reports required by this section shall be filed with the county clerk in the county in which the election is held.

Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.** (1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

History. Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 1993, No. 1243, § 3; Init. Meas. 1996, No. 1, § 6; Acts 1999, No. 553, §§ 10-12; 2001, No. 1839, § 6; 2003, No. 195, § 5; 2007, No. 221, § 7; 2009, No. 1204, § 5; 2011, No. 721, § 8; 2013, No. 382, § 5.

Amendments. The 2013 amendment added "for the entire election cycle" at the end of (b)(1)(A).

7-6-216. Registration and reports by exploratory committees.

(a)(1) An exploratory committee shall register with the appropriate filing office within fifteen (15) days after receiving contributions during a calendar year which, in the aggregate, exceed five hundred dollars (\$500).

(2)(A) For a state or district office, the place of filing shall be the Secretary of State's office.

(B) For a county, municipal, township, or school district office, the place of filing shall be the county clerk's office.

(3) Registration shall be on forms provided by the Secretary of State and the contents therein shall be verified by an affidavit of an officer of the committee.

(b) An exploratory committee shall disclose on the registration form the name, address, and, where available, phone number of the committee and each of its officers. It shall also disclose the individual person who, upon becoming a candidate, is intended to receive campaign contributions from the committee.

(c) Within thirty (30) days of the end of each month, an exploratory committee shall file a report with the appropriate filing office indicating:

(1) The total amount of contributions received during the filing period;

(2) The name and address of each person who has made a contribution which, in the aggregate, exceeds fifty dollars (\$50.00), along with the contributor's principal place of business, employer, occupation, and the amount contributed; and

(3) The total amount of expenditures made and, for each single expenditure that exceeds one hundred dollars (\$100), an itemization, including the amount of the expenditure, the name and address of the

person to whom the expenditure was made, and the date the expenditure was made.

(d)(1) The first report shall be filed for the month in which the committee files its registration. The final report shall be filed within thirty (30) days after the end of the month in which the committee either transfers its contributions to a candidate's campaign or no longer accepts contributions.

(2) The committee shall not accept contributions after the filing of a final report.

History. Init. Meas. 1990, No. 1, § 6; Acts 1999, No. 553, § 18; 2001, No. 1839, § 8; 2007, No. 221, § 9; 2009, No. 473, § 6; 2011, No. 721, § 10; 2013, No. 1126, § 12.

Amendments. The 2013 amendment substituted "that" for "which" in (c)(3).

7-6-218. Citizen complaints.

(a)(1) Any citizen may file a complaint with the Arkansas Ethics Commission against a person covered by this subchapter, by § 7-1-103(a)(1)-(4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., or § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq. for an alleged violation of the subchapters. For purposes of this subdivision (a)(1), the Arkansas Ethics Commission shall be considered a citizen.

(2) A complaint must be filed within four (4) years after the alleged violation occurred. If the alleged violation is the failure to file a report or the filing of an incorrect report, the complaint must be filed within four (4) years after the date the report was due.

(b)(1)(A) Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the commission shall investigate the alleged violation of this subchapter or § 7-1-103(a)(1)-(4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.

(B) The commission shall immediately notify any person under investigation of the investigation and of the nature of the alleged violation.

(C) The commission in a document shall advise the complainant and the respondent of the final action taken, together with the reasons for the action, and such document shall be a public record.

(D) Filing of a frivolous complaint shall be a violation of this subchapter. For purposes of this section, "frivolous" means clearly lacking any basis in fact or law. In any case in which the commission has dismissed a complaint, the respondent may request in writing that the commission make a finding as to whether or not the complaint filed was frivolous. In the event that the commission finds

that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in § 7-6-218(b)(4).

(2) If, after the investigation, the commission finds that probable cause exists for a finding of a violation, the respondent may request a hearing. The hearing shall be a public hearing.

(3)(A) The commission shall keep a record of its investigations, inquiries, and proceedings.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, all proceedings, records, and transcripts of any investigations or inquiries shall be kept confidential by the commission, unless the respondent requests disclosure of documents relating to investigation of the case, in case of a hearing under subdivision (b)(2) of this section, or in case of judicial review of a commission decision pursuant to § 25-15-212.

(ii)(a) Through its members or staff, the commission may disclose confidential information to proper law enforcement officials, agencies, and bodies or as may be required to conduct its investigation.

(b) If an investigation or inquiry concerns an attorney or judge, the commission may, through its members or staff, disclose confidential information to the Supreme Court Committee on Professional Conduct or the Judicial Discipline and Disability Commission.

(C) Thirty (30) days after any final adjudication in which the commission makes a finding of a violation, all records relevant to the investigation and upon which the commission has based its decision, except working papers of the commission and its staff, shall be open to public inspection.

(4) If the commission finds a violation of this subchapter, § 7-1-103(a)(1)-(4), (6), or (7), § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq., then the commission shall do one (1) or more of the following, unless good cause be shown for the violation:

(A) Issue a public letter of caution or warning or reprimand;

(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars (\$50.00) nor more than two thousand dollars (\$2,000) for negligent or intentional violation of this subchapter or § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., and § 21-8-901 et seq.

(ii) The commission shall adopt rules governing the imposition of such fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(iii) All moneys received by the commission in payment of fines shall be deposited into the State Treasury as general revenues;

(C) Order the respondent to file or amend a statutorily required disclosure form; or

(D)(i) Report its finding, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.

(ii) When exercising the authority provided in this subdivision (b)(4), the commission is not required to make a finding of a violation of the laws under its jurisdiction.

(5)(A) The commission shall complete its investigation of a complaint filed pursuant to this section and take final action within one hundred fifty (150) days of the filing of the complaint. If a hearing under subdivision (b)(2) of this section or other hearing of adjudication is conducted, all action on the complaint by the commission shall be completed within one hundred eighty (180) days.

(B) However, such time shall be tolled during the pendency of any civil action, civil appeal, or other judicial proceeding involving those particular commission proceedings.

(c) Any final action of the commission under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

History. Init. Meas. 1990, No. 1, § 6; Acts 1995, No. 349, § 2; 1995, No. 352, § 2; 1999, No. 553, § 22; 2001, No. 1839, §§ 11-13; 2003, No. 195, § 7; 2007, No. 221, § 10; 2013, No. 1115, § 1.

Amendments. The 2013 amendment substituted “Except as provided in subdi-

vision (b)(3)(B)(ii) of this section, all” for “All” in (b)(3)(B)(i); redesignated former (b)(3)(B)(ii) as present (b)(3)(B)(ii)(a); substituted “Through” for “However, through” in present (b)(3)(B)(ii)(a); and added (b)(3)(B)(ii)(b).

7-6-223. Reports of contributions by political parties.

(a) Within fifteen (15) calendar days after the end of each calendar quarter, each political party that meets the definition of political party stated in § 7-1-101 or that has met the petition requirements of § 7-7-205 shall file a quarterly report with the Secretary of State.

(b) The report shall include:

(1) The total amount of contributions received by the political party during the preceding calendar quarter;

(2) An itemization, including the name, address, employer, and occupation of each person who made a contribution or contributions to the political party which, in the aggregate, exceeded fifty dollars (\$50.00) in the preceding calendar quarter, as well as the amount received and date of receipt;

(3) The total amount of money disbursed by the political party during the preceding calendar quarter; and

(4) An itemization, including the amount of the disbursement, the name and address of the person to whom the disbursement was made, and the date the disbursement was made for each single disbursement that exceeded one hundred dollars (\$100).

(c) If a political party received contributions and disbursed money before the calendar quarter in which it met the petition requirements of § 7-7-205, the first quarterly report shall also include all information required by subsection (b) which occurred before the quarter in which the political party met the petition requirements of § 7-7-205.

History. Init. Meas. 1996, No. 1, § 11; Acts 2003, No. 1730, § 1; 2005, No. 1284, § 8; 2009, No. 473, § 7; 2013, No. 382, § 6.

Amendments. The 2013 amendment added (c).

CHAPTER 7

NOMINATIONS AND PRIMARY ELECTIONS

SUBCHAPTER.

1. METHODS OF NOMINATION.
2. PRIMARY ELECTIONS GENERALLY.
3. CONDUCT OF PRIMARY.

SUBCHAPTER 1 — METHODS OF NOMINATION

SECTION.

- 7-7-103. Filing as an independent — Petitions — Disqualification.
- 7-7-106. Filling vacancies in candidacy

for nomination — Preferential primary.

7-7-101. Selection of nominees.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for

United States Senate on Ballot. 59 A.L.R.6th 111.

7-7-103. Filing as an independent — Petitions — Disqualification.

(a)(1) A person desiring to have his or her name placed upon the ballot as an independent candidate without political party affiliation for any United States office other than President of the United States or Vice President of the United States or state, county, township, or district office in any general election in this state shall file, during the party filing period for the year in which the election is to be held, a political practices pledge, an affidavit of eligibility, the petition under this section, and a notice of candidacy stating the name and title the candidate proposes to appear on the ballot and identifying the elective office sought, including the position number, if any.

(2)(A) An independent candidate shall state the same position, including the position number, if any, on his or her petition.

(B) When a candidate has identified the position sought on the notice of candidacy, the candidate shall not be allowed to change the position but may withdraw a notice of candidacy and file a new notice of candidacy designating a different position before the deadline for filing.

(b)(1)(A) The person shall file petitions signed by not less than three percent (3%) of the qualified electors in the county, township, or district in which the person is seeking office, but in no event shall

more than two thousand (2,000) signatures be required for a district, county, or township office.

(B) If the person is a candidate for state office or for United States Senator in which a statewide race is required, the person shall file petitions signed by not less than three percent (3%) of the qualified electors of the state or which contain ten thousand (10,000) signatures of qualified electors, whichever is the lesser.

(2) Each elector signing the petition shall be a registered voter, and the petition shall be directed to the official with whom the person is required by law to file the petition to qualify as a candidate and shall request that the name of the person be placed on the ballot for election to the office mentioned in the petition.

(3) Petitions shall be circulated not earlier than ninety (90) calendar days before the deadline for filing petitions to qualify as an independent candidate unless the number of days is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under § 7-11-101 et seq.

(4) In determining the number of qualified electors in any county, township, or district or in the state, the total number of votes cast therein for all candidates in the preceding general election for the office of Governor shall be conclusive of the number of qualified electors therein for the purposes of this section.

(5) If the number of days in which the petition for independent candidacy may be circulated is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under § 7-11-101 et seq., the number of signatures required on the petition shall be reduced proportionately.

History. Acts 1969, No. 465, Art. 1, § 5; 1971, No. 261, § 3; 1972 (Ex. Sess.), No. 42, §§ 1, 2; 1975, No. 700, § 1; 1977, No. 731, § 1; 1981, No. 960, § 1; 1985, No. 1055, § 3; A.S.A. 1947, §§ 3-105, 3-105.1; Acts 1989, No. 591, §§ 1, 2; 1993, No. 512, § 7; 1997, No. 886, § 2; 1999, No. 77, § 1; 2001, No. 472, § 1; 2001, No. 1553, § 19; 2001, No. 1789, § 6; 2003, No. 1165, § 6;

2003, No. 1731, § 3; 2005, No. 67, § 16; 2007, No. 1020, § 13; 2007, No. 1049, § 21; 2009, No. 188, § 1; 2009, No. 1480, § 41; 2013, No. 1356, § 1.

Amendments. The 2013 amendment inserted "the petition under this section" in (a)(1); substituted "file" for "furnish by 12:00 noon on May 1 of the year in which the election is to be held" in (b)(1)(A).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Requirements for Placement of Independent Candidates for

United States Senate on Ballot. 59 A.L.R.6th 111.

7-7-106. Filling vacancies in candidacy for nomination — Preferential primary.

(a) A political party may fill a vacancy if:

(1) A person is running unopposed in a preferential primary and cannot accept the nomination due to death; or

(2) A person is running unopposed in a preferential primary and notifies the party that he or she will not accept the nomination due to a serious illness.

(b) The vacancy shall be filled within ten (10) calendar days after the death or notification to the political party.

(c) The vacancy shall be filled at a convention of the political party.

(d) If the vacancy is filled more than sixty-six (66) days before the preferential primary election, the name of the person filling the vacancy shall be printed on the ballot instead of the name of the person who vacated the candidacy.

(e) If the vacancy is filled less than sixty-six (66) days before the date of the preferential primary, the name of the person subsequently elected to fill the vacancy in candidacy shall be declared the nominee even if the name of the person who vacated the candidacy appears on the preferential primary ballot.

(f) If the vacancy in candidacy is not filled before the date of the preferential primary election, a vacancy in nomination shall be deemed to exist on the date of the preferential primary election and the vacancy in nomination shall be filled under § 7-7-104.

History. Acts 2001, No. 1772, § 1; 2007, No. 1049, § 24; 2013, No. 1126, § 13. substituted "A person is running unopposed in a preferential primary and notifies" for "Upon notification to" in (a)(2).

Amendments. The 2013 amendment

SUBCHAPTER 2 — PRIMARY ELECTIONS GENERALLY

SECTION.

7-7-205. Petition requirements for new political parties.

7-7-203. Dates.

CASE NOTES

Name on Ballot.

Appeal by an inmate in an election-related matter was moot because an election had already been held, and the deadlines for placing the inmate's name on the ballot and for registering to vote had already passed; the issue was not capable of repetition, yet evading review, since the inmate did not indicate that he intended to run for President of the United States

again in 2016 or later, there was nothing to suggest that, were he to run again, he would have been subjected to the same action, and there were adequate procedures in place for accelerated consideration of election matters. Moreover, there was no substantial public interest shown. Judd v. Martin, 2013 Ark. 136, — S.W.3d — (2013).

7-7-205. Petition requirements for new political parties.

(a)(1) A group desiring to form a new political party shall do so by filing a petition with the Secretary of State.

(2) The petition shall contain at the time of filing the signatures of at least ten thousand (10,000) registered voters in the state.

(3) The Secretary of State shall not accept for filing any new party petition that is not prima facie sufficient at the time of filing.

(4)(A) No signature shall be counted unless the date of the signature appears on the petition.

(B) No signature that is dated more than ninety (90) days before the date the petition is submitted shall be counted.

(5)(A) The petition shall declare the intent of organizing a political party, the name of which shall be stated in the declaration.

(B) No political party or group shall assume a name or designation that is so familiar, in the opinion of the Secretary of State, as to confuse or mislead the voters at an election.

(6) A new political party that wishes to select nominees for the next general election shall file a sufficient petition no later than sixty (60) days before the party filing period.

(b)(1) The Secretary of State shall determine the sufficiency of the signatures submitted within thirty (30) days of filing.

(2) If the petition is determined to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding.

(c)(1) Upon certification of sufficiency of the petition by the Secretary of State, a new political party shall be declared by the Secretary of State.

(2) A new political party formed by the petition process shall nominate candidates by convention for the first general election after certification.

(3) A candidate nominated by convention shall file a political practices pledge with the Secretary of State or county clerk, as the case may be, during the party filing period.

(4) If the new party maintains party status by obtaining three percent (3%) of the total votes cast for the office of Governor or nominees for presidential electors at the first general election after certification, the new political party shall nominate candidates in the party primary as set forth in § 7-7-101 et seq.

(5) Any challenges to the certification of the sufficiency of the petition by the Secretary of State shall be filed with the Pulaski County Circuit Court.

History. Acts 1997, No. 886, § 4; 2003, No. 1165, §§ 8, 9; 2007, No. 821, § 1; 2009, No. 188, § 2; 2009, No. 959, § 37; 2011, No. 1036, § 2; 2013, No. 1356, § 2.

Amendments. The 2013 amendment, in (a)(6), substituted “sixty (60)” for “forty-

five (45)” and “party filing period” for “preferential primary election”; substituted “during the party filing period” for “no later than noon of the date of the preferential primary election” in (c)(3).

SUBCHAPTER 3 — CONDUCT OF PRIMARY

SECTION.

7-7-305. Printing of ballots — Form — Draw for ballot position.

SECTION.

7-7-306. Partisan and nonpartisan general election ballots.

7-7-305. Printing of ballots — Form — Draw for ballot position.

(a) The ballots of the primary election shall be provided by the county board of election commissioners. The form of the ballots shall be the same as is provided by law for ballots in general elections in this state. A different color ballot may be used to distinguish between political parties.

(b) The order in which the names of the respective candidates are to appear on the ballots at all preferential and general primary elections shall be determined by lot at the public meeting of the county board of election commissioners held not later than seventy-two (72) days before the preferential primary election. The county board shall give at least ten (10) days' written notice of the time and place of the meeting to the chairs of the county committees if the chairs are not members of the board, and at least three (3) days before the meeting, shall publish notice of the time and place of holding the meeting in some newspaper of general circulation in the county.

(c)(1)(A) A person who files for an elective office in this state may use not more than three (3) given names, one (1) of which may be a nickname or any other word used to identify the person to the voters, and may add as a prefix to his or her name the title or an abbreviation of an elective public office the person currently holds.

(B) A person may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:

(i) The person is currently serving in a nonpartisan judicial office to which the person has been elected in the last election for the office; or

(ii) The person:

(a) Is a candidate for the office of circuit judge or district judge;

(b) Is currently serving in the office of circuit judge or district judge as an appointee; and

(c) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles as proposed to be used by each candidate on the political practice pledge or, if the political practice pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

(3)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

History. Acts 1969, No. 465, Art. 1, § 14; 1971, No. 261, § 7; A.S.A. 1947, § 3-114; Acts 1991, No. 408, § 1; 1995, No. 901, § 9; 1999, No. 1335, § 1; 2001, No. 799, § 1; 2001, No. 1835, § 1; 2003, No. 1731, § 6; 2007, No. 559, § 6; 2007, No. 1020, § 16; 2007, No. 1049, § 27; 2009, No. 959, § 39; 2011, No. 1185, § 11; 2013, No. 1075, § 1.

Amendments. The 2013 amendment rewrote (c)(1) and added (c)(1)(B)(ii).

7-7-306. Partisan and nonpartisan general election ballots.

(a) At each party primary and nonpartisan general election, each county board of election commissioners shall furnish a separate ballot for each political party containing:

(1) The name of each person seeking nomination as a candidate of that political party;

(2) The name of each candidate for the general election to a nonpartisan office under § 7-10-101; and

(3) All measures and questions, if any, to be decided by the voters.

(b) The county board of election commissioners shall also furnish a separate ballot containing the names of all qualified candidates for the general election to nonpartisan offices and all measures, if any, to be decided by the voters.

History. Acts 1969, No. 465, Art. 1, § 15; A.S.A. 1947, § 3-115; Acts 1995, No. 901, § 10; 2005, No. 67, § 18; 2009, No. 959, § 39; 2013, No. 1110, § 8; 2013, No. 1126, § 14.

Amendments. The 2013 amendment by No. 1110 substituted “general election” for “judicial general” in the section heading; in the introductory language of (a), deleted “judicial” following “nonpartisan” and substituted “a separate ballot” for “separate ballots”; substituted “name of each person seeking nomination as a” for

“names of persons seeking offices to be voted on as a nominee or” in (a)(1); in (a)(2), substituted “name of each candidate” for “names of all qualified candidates” and “office” for “judicial offices”; and, in (b), deleted “nonpartisan” following “separate” and deleted “judicial” following “nonpartisan.”

The 2013 amendment by No. 1126 substituted “nomination as candidates” for “offices to be voted on as a nominee or candidate” in (a)(1).

CHAPTER 8 FEDERAL ELECTIONS

SUBCHAPTER.

3. PRESIDENTIAL ELECTORS.

SUBCHAPTER 1 — GENERAL PROVISIONS

7-8-104. Filling vacancies in the House of Representatives.

RESEARCH REFERENCES

ALR. Construction and Application of Const. Art. I, § 2, cl. 4, and State Provisions Concerning Such Elections. 62 Clause of United States Constitution, U.S. A.L.R.6th 143.

SUBCHAPTER 3 — PRESIDENTIAL ELECTORS

SECTION.

7-8-305. Publication of results — Certification of election.

7-8-305. Publication of results — Certification of election.

Within five (5) days after the votes shall have been canvassed and the results declared or the result declared by lot as provided in § 7-8-304, the Governor shall:

- (1) Cause the result of the election to be published;
- (2) Proclaim the persons composing the list so elected to be the electors of President and Vice President by mailing the electors a triplicate certificate of their appointment under the Seal of the State of Arkansas; and
- (3) Transmit under the Seal of the State of Arkansas to the Secretary of State of the United States the certificate of the election of the electors as required by the laws of Congress.

History. Acts 1969, No. 465, Art. 2, § 9; A.S.A. 1947, § 3-209; Acts 2013, No. 1126, § 15.

Amendments. The 2013 amendment substituted "Seal of the State of Arkansas" for "seal of the state" in (2).

CHAPTER 9

INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS

SUBCHAPTER.

1. PETITION AND ELECTION PROCEDURE.
2. LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS.
3. CONSTITUTIONAL CONVENTIONS.
4. DISCLOSURE FOR MATTERS REFERRED TO VOTERS.
5. REVIEW OF INITIATIVE PETITIONS.
6. PAID CANVASSERS.

SUBCHAPTER 1 — PETITION AND ELECTION PROCEDURE

SECTION.

7-9-101. Definitions.

7-9-103. Signing of petition — Penalty for

SECTION.

falsification — Notice of suspected forgery.

SECTION.

- 7-9-104. Form of initiative petition — Sufficiency of signatures.
- 7-9-105. Form of referendum petition — Sufficiency of signatures.
- 7-9-107. Approval of ballot titles and popular names of petitions prior to circulation — Publication.
- 7-9-108. Procedure for circulation of petition.
- 7-9-109. Form of verification — Penalty for false statement.

SECTION.

- 7-9-110. Designation of number and popular name.
- 7-9-111. Determination of sufficiency of petition — Corrections.
- 7-9-112. Failure to act on petition — Mandamus — Injunction.
- 7-9-114. Abstract of proposed measure.
- 7-9-125. Definitions — Prohibition of profit — Penalties — Freedom of information.
- 7-9-126. Count of signatures.

A.C.R.C. Notes.

Acts 2013, No. 1413, § 1 provided: "Legislative findings.

"(a) The General Assembly finds that:

"(1) Through Amendment 7 to the Arkansas Constitution, the people of Arkansas have reserved to themselves the power to propose legislative measures, laws, and amendments to the Arkansas Constitution and to enact or reject the proposed measures, laws, and amendments at the polls independently of the General Assembly;

"(2) The citizens of this state have an expectation that their right of initiative and referendum will be respected and that the process of gathering signatures of registered voters will be free of fraud, forgery, and other illegal conduct by sponsors, canvassers, notaries, and petitioners;

"(3) Sponsors and paid canvassers may have an incentive to knowingly submit forged or otherwise invalid signatures in order to obtain additional time to gather signatures and submit supplemental petitions;

"(4) In 2012, sponsors of four (4) separate initiative petitions submitted petitions to the Secretary of State containing over two hundred ninety-eight thousand (298,000) purported signatures of registered voters;

"(5) Of the four (4) petitions submitted, none had an initial validity rate in excess of fifty-six percent (56%), and three (3) of the petitions had an initial validity rate below thirty-one percent (31%); and

"(6) Of the three (3) petitions with the lowest initial validity rate, there were widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process.

"(b) It is further found and determined by the General Assembly that if an effort is not made to address these issues:

"(1) Untrained paid canvassers will continue to obtain and submit forged and otherwise facially invalid signatures; and

"(2) Unscrupulous sponsors and canvassers will continue to have an incentive to submit forged and otherwise facially invalid signatures and make false statements to the Secretary of State.

"(c) It is further found and determined by the General Assembly that if this act becomes law:

"(1) Sponsors and canvassers of proposed initiative measures will be held more accountable for their actions in gathering signatures from registered voters; and

"(2) The earlier determination of the insufficiency of petitions rife with false statements, forged signatures, and otherwise facially invalid signatures will result in less confusion and frustration with the initiative process.

"(d) For the reasons stated in this section, the General Assembly finds that passage of this act will make sponsors and canvassers more accountable to the people of this state, facilitate the initiative process, conserve state resources, and help to restore the confidence and trust of the people in the initiative process."

Effective Dates. Acts 2013, No. 1413, § 22: Apr. 22, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing procedures for initiating and referring state laws and ordinances pursuant to Amendment 7 to the Arkansas Constitution and state statutes

are inadequate to prevent fraudulent practices by sponsors and canvassers in obtaining ballot access; that this act addresses these inadequacies; and that this act is immediately necessary to prevent fraudulent practices because petition campaigns are either being conducted at the present time or may be conducted immediately upon the adjournment of the General Assembly with respect to either initiated or referred measures. Therefore, an emergency is declared to exist, and this

act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

7-9-101. Definitions.

As used in this subchapter:

(1) "Act" means an act having general application throughout the state, whether originating in the General Assembly or proposed by the people;

(2) "Amendment" means an amendment to the Arkansas Constitution that is proposed by the people;

(3) "Canvasser" means a person who circulates an initiative or referendum petition or a part or parts of an initiative or referendum petition to obtain the signatures of petitioners thereto;

(4) "Election" means a regular general election at which state and county officers are elected for regular terms;

(5) "Measure" means an amendment, an act, or an ordinance;

(6) "Ordinance" means an ordinance of a municipality or county, whether originating in the legislative body of the municipality or county or proposed by the people;

(7) "Petition part" means a petition signature sheet containing the information required under § 7-9-104 or § 7-9-105;

(8) "Petitioner" means a person who signs an initiative or referendum petition ordering a vote on a measure;

(9) "Registered voter" means a person who is registered at the time of signing the petition pursuant to Amendment 51 to the Arkansas Constitution; and

(10) "Sponsor" means a person who arranges for the circulation of an initiative or referendum petition or who files an initiative or referendum petition with the official charged with verifying the signatures.

History. Acts 1943, No. 195, § 1; A.S.A. 1947, § 2-201; Acts 1997, No. 646, § 1; 2013, No. 1413, § 2.

Amendments. The 2013 amendment deleted "and referred acts" at the end of (1); in (2), substituted "an" for "any proposed," "that is" for "whether," and deleted

"General Assembly or by the" preceding "people"; deleted (5) and redesignated former (6) as present (5); rewrote present (5), (8), and (10); inserted (6), (7) and (9) and redesignated the remaining subsections accordingly.

7-9-103. Signing of petition — Penalty for falsification — Notice of suspected forgery.

(a)(1)(A) A person who is a registered voter of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed amendment or a proposed or referred act.

(B) If a person signing a petition under subdivision (a)(1)(A) of this section requires assistance due to disability, another person:

(i) May print the name, address, birth date, and the date of signing; and

(ii) Shall sign and print his or her name in the margin of the petition.

(2)(A) A person who is a registered voter of a municipality or county of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed or referred ordinance.

(B) If a person signing a petition under subdivision (a)(2)(A) of this section requires assistance due to disability, another person:

(i) May print the name, address, birth date, and the date of signing; and

(ii) Shall sign and print his or her name in the margin of the petition.

(3) A person who is under eighteen (18) years of age shall not act as a canvasser.

(4) A person shall not act as a paid canvasser on a statewide initiative or referendum petition if the sponsor has not provided the information required under § 7-9-601 to the Secretary of State before the person solicits signatures on a petition.

(b) A person commits a Class A misdemeanor if the person, acting as a canvasser, notary, sponsor, or agent of a sponsor:

(1) Signs a name other than his or her own to a petition;

(2) Prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability and the person complies with this section;

(3) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(4) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(5) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or

(6) As a sponsor, files a petition part with the official charged with verifying the signatures knowing that the petition part contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

(c) When the official charged with verifying the signatures has reasonable grounds to believe that one (1) or more signatures on a petition is forged, excluding signatures apparently signed by one (1) spouse for another, the official shall report the suspected forgery and basis for suspecting forgery to:

(1) The Department of Arkansas State Police, in the case of a statewide petition; or

(2) The prosecuting attorney of the county, in the case of a local petition.

History. Acts 1913, No. 135, § 3; C. & M. Dig., § 7505; Pope's Dig., § 9564; Acts 1943, No. 195, § 2; A.S.A. 1947, §§ 2-202, 2-401; Acts 1991, No. 719, § 1; 1997, No. 646, § 3; 2013, No. 1413, § 3; 2013, No. 1432, § 10.

A.C.R.C. Notes.

Former subdivisions (b)(6) through (8) of this section were also amended by Acts 2013, No. 1413, § 3, prior to the repeal of former subdivision (b) by Acts 2013, No. 1432, § 10, which read:

“(6) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a

person to sign a petition;

“(7) As a canvasser, knowingly makes a false statement on a petition verification form;

“(8) As a notary, knowingly fails to witness a canvasser's affidavit by witnessing the signing of the instrument in person and either personally knowing the signer or by being presented with proof of the identity of the signer; or”

Amendments. The 2013 amendment by No. 1413 rewrote the section.

The 2013 amendment by No. 1432 repealed former (b).

7-9-104. Form of initiative petition — Sufficiency of signatures.

(a) The petition for an ordinance, act, or amendment proposed by initiative shall be on substantially the following form:

“INITIATIVE PETITION

To the Honorable _____
Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned registered voters of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), respectfully propose the following amendment to the Constitution of the State or act or ordinance (as the case may be), and by this, our petition, order that the same be submitted to the people of said state, or county, or municipality (as the case may be), to the end that the same may be adopted, enacted, or rejected by the vote of the registered voters of said (state, county, or municipality) at the regular general election to be held on the ____ day of ____, 20____, and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

(Here insert popular name and ballot title of initiated measure.)

(In the case of a proposed initiated act or ordinance, insert the following:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS, OR _____ COUNTY, ARKANSAS, OR CITY OF _____ OR INCORPORATED TOWN OF _____, ARKANSAS (as the case may be));

(Here insert full text of initiated measure.)”

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter’s name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all the information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

(d)(1) The signature section of the petition shall be formatted and shall contain the number of signature lines prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

History. Acts 1911 (Ex. Sess.), No. 2, § 4; C. & M. Dig., § 9761; Pope’s Dig., § 13285; A.S.A. 1947, § 2-203; Acts 1989, No. 280, § 1; 1991, No. 42, § 1; 1997, No. 646, § 4; 2001, No. 789, § 1; 2005, No. 67, § 23; 2013, No. 1413, §§ 4, 5.

Amendments. The 2013 amendment, in (a), substituted “act” for “law,” “registered” for “legal,” or similar language

throughout, deleted “to wit: Here insert title and full text of measure proposed” following “(as the case may be),” and deleted “in said” following “election to be held” and inserted “or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be),” and the final two paragraphs; and added (d).

CASE NOTES

Sufficiency of Petition.

Because the initiative sponsors’ revised ballot title was something clearly different than the original ballot title, no signature collected under the former title may support certification of the revised ballot

title under Ark. Const. Amend. 7, § 7-9-106(a), or subsection (a) of this section; the Secretary of State’s certification was vacated and any votes cast could not be counted. *Walmsley v. Martin*, 2012 Ark. 370, — S.W.3d — (2012).

7-9-105. Form of referendum petition — Sufficiency of signatures.

(a) The petition and order of referendum for an ordinance or act shall be on substantially the following form:

“REFERENDUM PETITION

To the Honorable _____
Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned registered voters of the State of Arkansas, or _____ County, Arkansas, or City or Incorporated Town of _____, Arkansas, (as the case may be) respectfully order by this, our petition, that Act No. ____ of the General Assembly of the State of Arkansas, approved on the ____ day of _____, 20____, entitled ‘An Act _____’ or Ordinance No. _____, passed by the county quorum court, the city (or town) council of the City (or Incorporated Town), or County of _____, Arkansas, on the ____ day of _____, 20____, entitled, ‘An Ordinance _____,’ be referred to the people of said state, county, or municipality (as the case may be), to the end that the same may be approved or rejected by the vote of the registered voters of the state, or of said county or municipality (as the case may be) at the biennial (or annual, as the case may be, if a city ordinance) regular general election (or at a special election, as the case may be) to be held on the ____ day of _____, 20____; and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

(Here insert popular name and ballot title of referred measure.)

REFERRED TO THE PEOPLE OF THE STATE OF ARKANSAS, OR _____ COUNTY, ARKANSAS, OR CITY OF _____ OR INCORPORATED TOWN OF _____, ARKANSAS (as the case may be):

(Here insert full text of referred measure.)”

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter’s name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all of that information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

(d)(1) The signature section of the petition shall be formatted and shall contain the number of signature lines as prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

History. Acts 1911 (Ex. Sess.), No. 2, § 2; C. & M. Dig., § 9766; Pope's Dig., § 13287; A.S.A. 1947, § 2-204; Acts 1989, No. 280, § 2; 1991, No. 42, § 2; 1997, No. 646, § 5; 2001, No. 790, § 1; 2005, No. 67, § 24; 2013, No. 1413, §§ 6, 7.

Amendments. The 2013 amendment, in (a), inserted "for an ordinance or act" in

the first sentence, "or ____ County, Arkansas, or City of ____, or Incorporated Town of ____, Arkansas (as the case may be)" and the final two paragraphs, substituted "REFERENDUM PETITION" for "PETITION FOR REFERENDUM" and "registered" for "legal" throughout; and inserted (d).

7-9-106. Required attachments to petitions.

CASE NOTES

In General.

Because the initiative sponsors' revised ballot title was something clearly different than the original ballot title, no signature collected under the former title may support certification of the revised ballot

title under Ark. Const. Amend. 7, subsection (a) of this section, or § 7-9-104(a); the Secretary of State's certification was vacated and any votes cast could not be counted. *Walmsley v. Martin*, 2012 Ark. 370, — S.W.3d — (2012).

7-9-107. Approval of ballot titles and popular names of petitions prior to circulation — Publication.

(a) Before any initiative or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures of petitioners, the sponsors shall submit the original draft to the Attorney General, with a proposed legislative or ballot title and popular name.

(b) Within ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act. The ballot title so submitted or supplied by the Attorney General shall briefly and concisely state the purpose of the proposed measure.

(c) If, as a result of his or her review of the ballot title and popular name of a proposed initiated act or a proposed amendment to the Arkansas Constitution, the Attorney General determines that the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.

(d) If the Attorney General refuses to act or if the sponsors feel aggrieved at the Attorney General's acts in such premises, the sponsors may, by petition, apply to the Supreme Court for proper relief.

(e) [Repealed.]

(f) [Repealed.]

History. Acts 1943, No. 195, § 4; 1977, No. 208, § 1; A.S.A. 1947, § 2-208; Acts 1989, No. 280, § 3; 1989, No. 912, § 6; 2013, No. 1413, §§ 8, 9.

Amendments. The 2013 amendment, in (d), substituted "the Attorney General's" for "his or her" and "the sponsors" for "they"; and repealed (e) and (f).

7-9-108. Procedure for circulation of petition.

(a) Each initiative or referendum petition ordering a vote upon a measure having general application throughout the state shall be prepared and circulated in fifteen (15) or more parts or counterparts, and each shall be an exact copy or counterpart of all other such parts upon which signatures of petitioners are to be solicited. When a sufficient number of parts are signed by a requisite number of qualified electors and are filed and duly certified by the Secretary of State, they shall be treated and considered as one (1) petition.

(b) Each part of a petition shall have attached thereto the affidavit of the canvasser to the effect that the canvasser's current residence address appearing on the verification is correct, that all signatures appearing on the petition part were made in the presence of the affiant, and that to the best of the affiant's knowledge and belief each signature is genuine and each person signing is a registered voter.

(c) Preceding every petition, there shall be set out in boldface type, over the signature of the Attorney General, any instructions to canvassers and signers as may appear proper and beneficial informing them of the privileges granted by the Arkansas Constitution and of the penalties imposed for violations of this act. The instructions on penalties shall be in larger type than the other instructions.

(d) No part of any initiative or referendum petition shall contain signatures of petitioners from more than one (1) county.

History. Acts 1943, No. 195, § 3; A.S.A. 1947, § 2-206; Acts 1991, No. 719, § 2; 2013, No. 1413, § 10.

Amendments. The 2013 amendment, in (b), substituted "canvasser to the effect that the canvasser's current residence ad-

dress appearing on the verification is correct" for "person who circulated the petition to the effect that," "on the petition part" for "thereon," "each person" for "that the person so," and "registered" for "legal."

7-9-109. Form of verification — Penalty for false statement.

(a) Each petition containing signatures shall be verified in substantially the following form by the canvasser's affidavit thereon as a part thereof:

"State of Arkansas
County of _____

I, (print name of canvasser), being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Residence _____

Indicate one: ____ Paid Canvasser ____ Volunteer/Unpaid Canvasser

Subscribed and sworn to before me this ____ day of _____, 20____

Signature _____

Clerk, Notary, Judge, or J.P.

Seal _____”

(b) Forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors.

(c)(1) Petitions shall not be disqualified due to clerical or technical errors made by a clerk, notary, judge, or justice of the peace when verifying the canvasser’s signature.

(2) Petitions shall not be disqualified for failure of a clerk, notary, judge, or justice of the peace to sign exactly as his or her name appears on his or her seal if the signature of a clerk, notary, judge, or justice of the peace is sufficient to verify his or her name.

(d) A canvasser who knowingly makes a false statement on a petition verification form required by this section shall be deemed guilty of a Class D felony.

History. Acts 1911 (Ex. Sess.), No. 2, § 8; C. & M. Dig., § 9769; Pope’s Dig., § 13289; A.S.A. 1947, § 2-207; Acts 1989, No. 280, § 4; 1991, No. 42, § 3; 1991, No. 197, § 1; 1997, No. 646, § 6; 2005, No. 1817, § 1; 2013, No. 1413, § 11.
Amendments. The 2013 amendment rewrote (a).

7-9-110. Designation of number and popular name.

(a) The popular name of each state measure shall be designated as provided in § 7-9-107, and the number of the measure on the ballot shall be designated as provided in § 7-9-116.

(b) In all legal notices and publications affecting a measure, the measure shall be identified by both the designated number and popular name.

History. Acts 1933, No. 71, §§ 1, 2; Pope’s Dig., §§ 1772, 1773; A.S.A. 1947, §§ 2-209, 2-214; Acts 1993, No. 512, § 9; 2009, No. 281, § 1; 2013, No. 1413, § 12.
Amendments. The 2013 amendment rewrote the section.

7-9-111. Determination of sufficiency of petition — Corrections.

(a)(1) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of each initiative and referendum petition within thirty (30) days after it is filed.

(2) The Secretary of State may contract with the various county clerks for their assistance in verifying the signatures on petitions. The county clerk shall return the petitions to the Secretary of State within ten (10) days.

(3) After a petition has been filed under this subchapter, a canvasser shall not circulate a petition or collect, solicit, or obtain any additional signatures for the filed petition until the Secretary of State determines the sufficiency of the petition under this section.

(b) In considering the sufficiency of initiative and referendum petitions, if it is made to appear beyond a reasonable doubt that twenty percent (20%) or more of the signatures on any one (1) part thereof are fictitious, forged, or otherwise clouded or that the challenged petitioners were ineligible to sign the petition, which fact was known or could have been ascertained by the exercise of reasonable diligence on the part of the canvasser, then the Secretary of State shall require the sponsors to assume the burden of proving that all other signatures appearing on the part are genuine and that the signers are qualified electors and are in all other respects entitled to sign the petition. If the sponsors refuse or fail to assume and meet the burden, then the Secretary of State shall reject the part and shall not count as petitioners any of the names appearing thereon.

(c) If the petition is found to be sufficient, the Secretary of State shall certify and record the finding and do and perform such other duties relating thereto as are required by law.

(d)(1) If the petition is found to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding. When the notice is delivered, the sponsors shall have thirty (30) days in which to do any or all of the following:

(A) Solicit and obtain additional signatures;

(B) Submit proof to show that the rejected signatures or some of them are good and should be counted; or

(C) Make the petition more definite and certain.

(2) Any amendments and corrections shall not materially change the purpose and effect of the petition. No change shall be made in the measure, except to correct apparent typographical errors or omissions.

(3) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of additional signatures submitted by the sponsors under this subsection within thirty (30) days of the filing of the supplemental petitions.

(e)(1) To assist the Secretary of State in ascertaining the sufficiency or insufficiency of each initiative and referendum petition, all county clerks shall furnish at cost to the Secretary of State a single alphabeti-

cal list of all registered voters in their respective counties. The list shall be provided at least four (4) months before the election, and an updated list shall be provided at cost by September 1 in the year of the election. The list shall include the date of birth of each registered voter.

(2) The State Board of Election Commissioners, upon the request of the county clerk, may grant a waiver from this provision if the state board determines that the county clerk is unable to provide the list within the time required.

(f)(1) A person filing initiative or referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.

(2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit the following:

(A) A statement identifying the paid canvassers by name; and

(B) A statement signed by the sponsor indicating that the sponsor:

(i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and

(ii) Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

(g) All county initiative and referendum elections shall be held in accordance with the provisions of § 14-14-917.

(h) Municipal referendum petition measures shall be submitted to the electors at a regular general election unless the petition expressly calls for a special election. If the date set by the petition does not allow sufficient time to comply with election procedures, then the city or town council shall fix the date for any special election on the referendum measure. The date of any special election shall be set in accordance with § 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar days after the date of certification of sufficiency by the municipal clerk.

History. Acts 1943, No. 195, § 5; A.S.A. § 30; 2009, No. 1480, § 46; 2013, No. 1947, § 2-210; Acts 1989, No. 280, § 5; 1991, No. 1094, § 1; 1991, No. 1153, § 1; 1997, No. 646, § 7; 1997, No. 1145, § 1; 2005, No. 2145, § 15; 2007, No. 1049,

§ 30; 2009, No. 1480, § 46; 2013, No. 1413, §§ 13-15.

Amendments. The 2013 amendment added (a)(3), (d)(3) and (f)(2).

CASE NOTES

ANALYSIS

Construction.
Purpose.

Construction.

Pursuant to the enabling legislation, this section and §§ 7-9-125(8), 7-9-402(2)(A)(9), that the corporation as spon-

sor had standing to invoke the Arkansas Supreme Court's jurisdiction. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

Purpose.

Under Ark. Const. Art. 5, § 1, Amend. 7 and subsection (d) of this section, a petition had to on its face contain, at the time

of the filing, the required signatures, and in order to qualify for additional time, the petition had to contain a sufficient number of signatures pursuant to the statewide and county-wide requirement, before the thirty-day provision to correct defi-

ciencies applied; the corporation failed to provide the court with any evidence of the validity of its petition. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

7-9-112. Failure to act on petition — Mandamus — Injunction.

(a) If the Secretary of State does not examine and certify an initiative or referendum petition within the time prescribed in § 7-9-111, the sponsors may apply to the Supreme Court for appropriate relief.

(b) If the Supreme Court decides that the petition is legally sufficient, it shall order the Secretary of State to certify the sufficiency for placing the initiated or referred measure on the election ballot.

(c) On a proper showing that any petition is not sufficient, the Supreme Court may enjoin the Secretary of State from certifying its sufficiency and may also enjoin the various election boards from allowing the ballot title thereof to be printed on the ballots and certifying votes cast on the proposal.

History. Acts 1943, No. 195, § 6; A.S.A. 1947, § 2-211; Acts 2013, No. 1413, § 16. **Amendments.** The 2013 amendment rewrote (a) and (b).

7-9-114. Abstract of proposed measure.

(a) The Attorney General shall prepare a concise abstract of the contents of each statewide initiative and referendum measure proposed under Arkansas Constitution, Amendment 7, and he or she shall transmit it to the Secretary of State not less than twenty (20) days before the election.

(b) Not less than eighteen (18) days before the election, the Secretary of State shall transmit a certified copy of the abstract to the county boards of election commissioners, who shall cause copies to be printed and posted conspicuously at all polling places in the county for the information of the voters.

(c) The cost of printing copies of the abstracts shall be borne by the counties as a regular expense of the election.

History. Acts 1959, No. 47, §§ 1-3; A.S.A. 1947, §§ 2-225 — 2-227; 2013, No. 1126, § 16. **Amendments.** The 2013 amendment substituted “less” for “fewer” in (b).

7-9-125. Definitions — Prohibition of profit — Penalties — Freedom of information.

(a) As used in this section, “property” means both real and personal property and includes without limitation both tangible and intangible property.

(b)(1) No person who is a sponsor of an initiative petition, referendum petition, or constitutional amendment which proposes the sale of

property owned by a municipality or county shall receive anything of value as a result of the passage of the act sponsored by the person.

(2) A sponsor of an initiative petition, referendum petition, or constitutional amendment which proposes the sale of property owned by a municipality or county shall file, within sixty (60) calendar days of the election at which the initiative, referendum, or constitutional amendment has been voted upon, with the Secretary of State an accounting of all expenditures by the sponsor in connection with the petition or amendment.

(3) No person shall directly or indirectly benefit from sponsorship of a petition or amendment which proposes the sale of property owned by a municipality or county by contracting sponsorship activities to any business enterprise in which the sponsor has a substantial interest.

(4) Nothing in this act shall prohibit the circulation of petitions or compensation to persons who circulate the petitions.

(c)(1)(A) If a sponsor violates any provision of subsection (b) of this section, the sponsor shall be fined an amount equal to twice the amount of the person's personal gain.

(B) The fine shall be paid to the state, municipality, or county in which the petition or amendment was voted upon.

(2) This section shall be enforced by the:

(A) City attorney of the municipality;

(B) Prosecuting attorney of the county; or

(C) Attorney General of this state.

(d) The expense reports filed by the sponsor of the petition shall be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2001, No. 1100, §§ 1-3; 2013, No. 1413, § 17.

Amendments. The 2013 amendment rewrote (a).

CASE NOTES

Standing.

Pursuant to the enabling legislation, subdivision (8) of this section and §§ 7-9-111, 7-9-402(2)(A)(9), that the corporation

as sponsor had standing to invoke the Arkansas Supreme Court's jurisdiction. *Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

7-9-126. Count of signatures.

(a) Upon the initial filing of an initiative or referendum petition, the official charged with verifying the signatures shall:

(1) Perform an initial count of the signatures; and

(2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) The petition is not an original petition, including without limitation a petition that is photocopied or is a facsimile transmission;

(2) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one (1) canvasser;

(3)(A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained;

(4) The canvasser verification is not notarized, is notarized by more than one (1) notary, or lacks a notary signature or a notary seal;

(5) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

(6) The petition fails to comply with § 7-9-104 or § 7-9-105, including the lack of the exact popular name or ballot title approved by the Attorney General for a statewide initiative, a discrepancy in the text of the initiated or referred measure, or the lack of an enacting clause in a statewide petition for an initiated act;

(7) The petition part of a statewide petition clearly and unmistakably contains signatures of petitioners from more than one (1) county unless each signature of a petitioner from another county is clearly stricken before the filing of the petition with the Secretary of State; or

(8) The petition part has a material defect that, on its face, renders the petition part invalid.

(c) The following signatures shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures:

(1) A signature that is not an original signature;

(2) A signature that is obviously not that of the purported petitioner;

(3) A signature that is illegible and is accompanied by no personally identifying information;

(4) A signature for which the corresponding printed name, address, or birth date is written by someone other than the signer except under circumstances of disability of the signer; and

(5) A signature that has any other material defect that, on its face, renders the signature invalid.

(d) If the initial count of signatures under this section is less than the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.

SUBCHAPTER 2 — LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS

SECTION.

7-9-204. Ballot titles and popular names of constitutional amend-

ments proposed by the legislature.

A.C.R.C. Notes.

Acts 2013, No. 1413, § 1 provided: Legislative findings.

“(a) The General Assembly finds that:

“(1) Through Amendment 7 to the Arkansas Constitution, the people of Arkansas have reserved to themselves the power to propose legislative measures, laws, and amendments to the Arkansas Constitution and to enact or reject the proposed measures, laws, and amendments at the polls independently of the General Assembly;

“(2) The citizens of this state have an expectation that their right of initiative and referendum will be respected and that the process of gathering signatures of registered voters will be free of fraud, forgery, and other illegal conduct by sponsors, canvassers, notaries, and petitioners;

“(3) Sponsors and paid canvassers may have an incentive to knowingly submit forged or otherwise invalid signatures in order to obtain additional time to gather signatures and submit supplemental petitions;

“(4) In 2012, sponsors of four (4) separate initiative petitions submitted petitions to the Secretary of State containing over two hundred ninety-eight thousand (298,000) purported signatures of registered voters;

“(5) Of the four petitions submitted, none had an initial validity rate in excess of fifty-six percent (56%), and three (3) of the petitions had an initial validity rate below thirty-one percent (31%); and

“(6) Of the three petitions with the lowest initial validity rate, there were widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process.

“(b) It is further found and determined by the General Assembly that if an effort is not made to address these issues:

“(1) Untrained paid canvassers will continue to obtain and submit forged and otherwise facially invalid signatures; and

“(2) Unscrupulous sponsors and canvassers will continue to have an incentive to submit forged and otherwise facially invalid signatures and make false statements to the Secretary of State.

“(c) It is further found and determined by the General Assembly that if this act becomes law:

“(1) Sponsors and canvassers of proposed initiative measures will be held more accountable for their actions in gathering signatures from registered voters; and

“(2) The earlier determination of the insufficiency of petitions rife with false statements, forged signatures, and otherwise facially invalid signatures will result in less confusion and frustration with the initiative process.

“(d) For the reasons stated in this section, the General Assembly finds that passage of this act will make sponsors and canvassers more accountable to the people of this state, facilitate the initiative process, conserve state resources, and help to restore the confidence and trust of the people in the initiative process.”

Effective Dates. Acts 2013, No. 1413, § 22: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that existing procedures for initiating and referring state laws and ordinances pursuant to Amendment 7 to the Arkansas Constitution and state statutes are inadequate to prevent fraudulent

practices by sponsors and canvassers in obtaining ballot access; that this act addresses these inadequacies; and that this act is immediately necessary to prevent fraudulent practices because petition campaigns are either being conducted at the present time or may be conducted immediately upon the adjournment of the General Assembly with respect to either

initiated or referred measures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor

vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

7-9-204. Ballot titles and popular names of constitutional amendments proposed by the legislature.

The General Assembly may designate in the joint resolution proposing an amendment to the Arkansas Constitution the popular name and ballot title of the amendment for the election ballot.

History. Acts 2001, No 150, § 1; 2013, No. 1413, § 19. rewrote the section catchline and the section.

Amendments. The 2013 amendment

SUBCHAPTER 3 — CONSTITUTIONAL CONVENTIONS

SECTION.

7-9-306. Organizational meeting — Plenary meeting.

7-9-306. Organizational meeting — Plenary meeting.

(a) Whenever a majority of the electors vote affirmatively to call a constitutional convention, it shall be the duty of the delegates elected as prescribed in § 7-9-305 to assemble at the State Capitol Building at 10:00 a.m. on the first Tuesday after the first Monday in January next after their election for an organizational meeting of no longer than two (2) days’ duration.

(b) This meeting shall be for the purpose of electing permanent convention officers, adopting rules of procedure, and providing for such interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention which shall convene at the State Capitol Building in the chamber of the House of Representatives on the first Monday of the following April.

(c) The Secretary of State shall preside at the organizational meeting until the permanent convention chair is selected, and he or she may vote in case of a tie vote in the selection of a permanent chair.

(d) At the meeting each member shall take an oath to support the Constitution of the United States and to faithfully discharge the duties of a convention delegate.

History. Acts 1968 (1st Ex. Sess.), No. 42, §§ 6, 7; A.S.A. 1947, §§ 2-109, 2-110; Acts 2013, No. 1126, § 17.

Amendments. The 2013 amendment, in (b), inserted “chamber of the” and substituted “of Representatives” for “Chamber.”

SUBCHAPTER 4 — DISCLOSURE FOR MATTERS REFERRED TO VOTERS

SECTION.

7-9-402. Definitions.

7-9-406. Financial reports — Requirement.

SECTION.

7-9-407. Financial report — Information.

7-9-412 — 7-9-414. [Repealed.]

7-9-402. Definitions.

As used in this subchapter:

(1) “Ballot question” means a question in the form of a statewide, county, municipal, or school district initiative or referendum which is submitted or intended to be submitted to a popular vote at an election, whether or not it qualifies for the ballot;

(2)(A) “Ballot question committee” means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question, or any person, other than a public servant expending public funds, a governmental body expending public funds, or an individual, located within or outside Arkansas, who makes expenditures for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of any ballot question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a ballot question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another ballot question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(3)(A) “Contribution” means, whether direct or indirect, advances, deposits, transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, pledges, or promises of money or anything of value, whether or not legally enforceable, to a person for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(B) “Contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events, and the granting of discounts or rebates by television and radio stations and newspapers, not extended on an equal basis to all persons seeking to expressly advocate the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question.

(C) “Contribution” shall not include noncompensated, nonreimbursed volunteer personal services or travel;

(4) "Contribution and expenditure" shall not include activities designed solely to encourage individuals to register to vote or to vote, or any communication by a bona fide church or religious denomination to its own members or adherents for the sole purpose of protecting the right to practice the religious tenets of the church or religious denomination, and "expenditure" shall not include one made for communication by a person strictly with the person's paid members or shareholders;

(5) "Disqualification of a ballot question" means any action or process, legal or otherwise, which seeks to prevent a ballot question from being on the ballot at an election;

(6) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, for goods, services, materials, or facilities for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question;

(7) "Legislative question" means a question in the form of a measure referred by the General Assembly, a quorum court, a municipality, or a school district to a popular vote at an election;

(8)(A) "Legislative question committee" means any person, located within or outside Arkansas, that receives contributions for the purpose of expressly advocating the passage or defeat of any legislative question or any person, other than a public servant expending public funds, a governmental body expending public funds, or an individual, located within or outside Arkansas, who makes expenditures for the purpose of expressly advocating the passage or defeat of any legislative question.

(B) A person other than an individual or an approved political action committee as defined in § 7-6-201, located within or outside Arkansas, also qualifies as a legislative question committee if two percent (2%) or more of its annual revenues, operating expenses, or funds are used to make a contribution or contributions to another legislative question committee and if the contribution or contributions exceed ten thousand dollars (\$10,000) in value;

(9)(A) "Person" means any individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" includes an elected official using public funds to expressly advocate the qualification, disqualification, passage, or defeat of any ballot question or the passage or defeat of any legislative question; and

(10) "Qualification of a ballot question" means any action or process, legal or otherwise, through which a ballot question obtains certification to be on the ballot at an election.

History. Acts 1989, No. 261, § 2; 1989, No. 634, § 2; 1993, No. 1114, § 2; 1993, No. 1235, §§ 1, 2; 2001, No. 1839, § 17; 2003, No. 195, § 8; 2005, No. 1765, § 1; 2009, No. 473, §§ 10, 11; 2011, No. 721, § 13; 2013, No. 312, § 3; 2013, No. 382, §§ 7, 8.

Amendments. The 2013 amendment by No. 312 substituted “an elected official” for “a public servant or governmental body” in (9)(B).

The 2013 amendment by No. 382 inserted “expending public funds” following “public servant” in (2)(A) and (8)(A).

CASE NOTES

Standing.

Pursuant to the enabling legislation, §§ 7-9-111, 7-9-125(8), and subdivision (2)(A)(9) of this section, that the corpora-

tion as sponsor had standing to invoke the Arkansas Supreme Court’s jurisdiction. *Ark. Hotels & Entm’t, Inc. v. Martin*, 2012 Ark. 335, — S.W.3d — (2012).

7-9-406. Financial reports — Requirement.

(a) A ballot question committee or legislative question committee that either receives contributions or makes expenditures in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the Arkansas Ethics Commission financial reports as required by §§ 7-9-407 — 7-9-409.

(b) An individual person who on his or her own behalf expends in excess of five hundred dollars (\$500), excluding contributions, for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the commission financial reports as required by §§ 7-9-407 — 7-9-409.

(c) An elected official expending public funds in excess of five hundred dollars (\$500) for the purpose of expressly advocating the qualification, disqualification, passage, or defeat of a ballot question or the passage or defeat of a legislative question shall file with the commission financial reports as required by §§ 7-9-407 — 7-9-409.

(d) Except as provided in subsection (f) of this section, any report required by this subchapter shall be deemed timely filed if it is:

- (1) Hand-delivered to the commission on or before the date due;
- (2) Mailed to the commission, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;
- (3) Received via facsimile by the commission on or before the date due, provided that the original is received by the commission within ten (10) days of the transmission; or

(4) Received by the commission in a readable electronic format that is approved by the commission.

(e) Whenever a report under this subchapter becomes due on a day that is a Saturday, Sunday, or legal holiday, the report shall be due the next day that is not a Saturday, Sunday, or legal holiday.

(f) A preelection report is timely filed if it is received by the commission no later than seven (7) days prior to the election for which it is filed.

(g) A final financial report as described in § 7-9-409(a)(3) is required regardless of whether a ballot question committee, individual, public servant, or governmental body received contributions or made expenditures in excess of five hundred dollars (\$500).

History. Acts 1989, No. 261, § 5; 1989, No. 634, § 5; 1993, No. 1114, § 5; 1999, No. 553, § 26; 2001, No. 1839, § 19; 2003, No. 195, § 9; 2005, No. 1765, § 4; 2007, No. 221, § 14; 2013, No. 312, § 4; 2013, No. 1085, § 1.

Amendments. The 2013 amendment by No. 312 substituted "An elected official" for "A public servant or governmental body" in (c).

The 2013 amendment by No. 1085 added (g).

7-9-407. Financial report — Information.

A financial report of a ballot question committee, a legislative question committee, an individual person, or an elected official, as required by § 7-9-406, shall contain the following information:

(1) The name, address, and telephone number of the committee, individual person, or elected official filing the report;

(2)(A) For a committee:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made by the committee or on behalf of the committee by an advertising agency, public relations firm, or political consultant during the period covered by the financial report;

(iii) The cumulative amount of contributions and expenditures reported under subdivisions (2)(A)(i) and (ii) of this section for each ballot question or legislative question;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed less than fifty dollars (\$50.00) and the cumulative amount of that total for each ballot question or legislative question;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed fifty dollars (\$50.00) or more, and the cumulative amount of that total for each ballot question or legislative question;

(vii) The name and street address of each person who contributed fifty dollars (\$50.00) or more during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each ballot question or legislative question;

(viii) For each person listed under subdivision (2)(A)(vii) of this section, the contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was ac-

cepted by the committee, and the cumulative amount contributed for each ballot question or legislative question;

(ix) The name and address of each person who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(x) A list of all paid canvassers, officers, and directors and the amount each person was paid;

(xi) A list of all expenditures by category, including without limitation the following:

(a) Advertising;

(b) Direct mail;

(c) Office supplies;

(d) Travel;

(e) Expenses; and

(f) Telephone; and

(xii) The total amount of nonitemized expenditures made during the period covered by the financial report;

(B) For an individual person:

(i) The total amount of expenditures made by the individual person or on behalf of the individual person by an advertising agency, public relations firm, or political consultant during the period covered by the financial report; and

(ii) The cumulative amount of expenditures for each ballot question or legislative question; and

(C) For a public servant using public funds or governmental body using public funds:

(i) The total amount of expenditures made by the public servant using public funds or governmental body using public funds or on behalf of the public servant using public funds or governmental body using public funds by an advertising agency, public relations firm, or political consultant during the period covered by the financial report; and

(ii) The cumulative amount of expenditures for each ballot question or legislative question; and

(3) The name and street address of each person to whom expenditures totaling one hundred dollars (\$100) or more were made by the committee, individual person, public servant using public funds, or governmental body using public funds or on behalf of the committee, individual person, public servant using public funds, or governmental body using public funds by an advertising agency, public relations firm, or political consultant, together with the date and amount of each separate expenditure to each person during the period covered by the financial report and the purpose of each expenditure.

History. Acts 1989, No. 261, § 6; 1989, No. 634, § 6; 1993, No. 1114, § 6; 2001, No. 1839, §§ 20, 21; 2003, No. 195, § 10; 2005, No. 1284, § 11; 2007, No. 1001, § 3; 2013, No. 312, § 5; 2013, No. 381, § 1; 2013, No. 1085, § 2.

Amendments. The 2013 amendment by No. 312 substituted "or an elected offi-

cial” for “a public servant or a governmental body” in the introductory language; and substituted “or elected official” for “public servant or governmental body” in (1).

The 2013 amendment by No. 381 rewrote (2)(A)(ii) and (2)(B)(i); inserted “us-

ing public funds” following “servant” in the introductory language of (2)(C); and rewrote (2)(C)(i) and (3).

The 2013 amendment by No. 1085 rewrote the section.

7-9-412 — 7-9-414. [Repealed.]

Publisher’s Notes. These sections, concerning the use of state funds to oppose or support a ballot measure were repealed by Acts 2013, No. 312, § 6. The sections were derived from the following sources:

7-9-412. Acts 1999, No. 1006, § 1.

7-9-413. Acts 1999, No. 1006, § 2.

7-9-414. Acts 1999, No. 1006, § 3.

SUBCHAPTER 5 — REVIEW OF INITIATIVE PETITIONS

SECTION.

7-9-501 — 7-9-506. [Repealed.]

A.C.R.C. Notes.

Acts 2013, No. 1413, § 1, provided: Legislative findings.

“(a) The General Assembly finds that:

“(1) Through Amendment 7 to the Arkansas Constitution, the people of Arkansas have reserved to themselves the power to propose legislative measures, laws, and amendments to the Arkansas Constitution and to enact or reject the proposed measures, laws, and amendments at the polls independently of the General Assembly;

“(2) The citizens of this state have an expectation that their right of initiative and referendum will be respected and that the process of gathering signatures of registered voters will be free of fraud, forgery, and other illegal conduct by sponsors, canvassers, notaries, and petitioners;

“(3) Sponsors and paid canvassers may have an incentive to knowingly submit forged or otherwise invalid signatures in order to obtain additional time to gather signatures and submit supplemental petitions;

“(4) In 2012, sponsors of four (4) separate initiative petitions submitted petitions to the Secretary of State containing over two hundred ninety-eight thousand (298,000) purported signatures of registered voters;

“(5) Of the four petitions submitted, none had an initial validity rate in excess of fifty-six percent (56%), and three (3) of the petitions had an initial validity rate below thirty-one percent (31%); and

“(6) Of the three petitions with the lowest initial validity rate, there were widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process.

“(b) It is further found and determined by the General Assembly that if an effort is not made to address these issues:

“(1) Untrained paid canvassers will continue to obtain and submit forged and otherwise facially invalid signatures; and

“(2) Unscrupulous sponsors and canvassers will continue to have an incentive to submit forged and otherwise facially invalid signatures and make false statements to the Secretary of State.

“(c) It is further found and determined by the General Assembly that if this act becomes law:

“(1) Sponsors and canvassers of proposed initiative measures will be held more accountable for their actions in gathering signatures from registered voters; and

“(2) The earlier determination of the insufficiency of petitions rife with false statements, forged signatures, and otherwise facially invalid signatures will result

in less confusion and frustration with the initiative process.

“(d) For the reasons stated in this section, the General Assembly finds that passage of this act will make sponsors and

canvassers more accountable to the people of this state, facilitate the initiative process, conserve state resources, and help to restore the confidence and trust of the people in the initiative process.”

Effective Dates. Acts 2013, No. 1413, § 22: Apr. 22, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that existing procedures for initiating and referring state laws and ordinances pursuant to Amendment 7 to the Arkansas Constitution and state statutes are inadequate to prevent fraudulent practices by sponsors and canvassers in obtaining ballot access; that this act addresses these inadequacies; and that this act is immediately necessary to prevent fraudulent practices because petition campaigns are either being conducted at the present time or may be conducted

immediately upon the adjournment of the General Assembly with respect to either initiated or referred measures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

7-9-501 — 7-9-506. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Acts 2013, No. 1413, § 20. The subchapter was derived from the following sources:

7-9-501. Acts 1999, No. 877, § 1.

7-9-502. Acts 1999, No. 877, § 6.

7-9-503. Acts 1999, No. 877, § 2.

7-9-504. Acts 1999, No. 877, § 3.

7-9-505. Acts 1999, No. 877, § 4.

7-9-506. Acts 1999, No. 877, § 5.

SUBCHAPTER 6 — PAID CANVASSERS

SECTION.

7-9-601. Hiring and training of paid canvassers.

A.C.R.C. Notes.

Acts 2013, No. 1413, § 1 provided: Legislative findings.

“(a) The General Assembly finds that:

“(1) Through Amendment 7 to the Arkansas Constitution, the people of Arkansas have reserved to themselves the power to propose legislative measures, laws, and amendments to the Arkansas Constitution and to enact or reject the proposed measures, laws, and amendments at the polls independently of the General Assembly;

“(2) The citizens of this state have an expectation that their right of initiative and referendum will be respected and that the process of gathering signatures of registered voters will be free of fraud, forgery, and other illegal conduct by sponsors, canvassers, notaries, and petitioners;

“(3) Sponsors and paid canvassers may have an incentive to knowingly submit forged or otherwise invalid signatures in order to obtain additional time to gather signatures and submit supplemental petitions;

"(4) In 2012, sponsors of four (4) separate initiative petitions submitted petitions to the Secretary of State containing over two hundred ninety-eight thousand (298,000) purported signatures of registered voters;

"(5) Of the four petitions submitted, none had an initial validity rate in excess of fifty-six percent (56%), and three (3) of the petitions had an initial validity rate below thirty-one percent (31%); and

"(6) Of the three petitions with the lowest initial validity rate, there were widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process.

"(b) It is further found and determined by the General Assembly that if an effort is not made to address these issues:

"(1) Untrained paid canvassers will continue to obtain and submit forged and otherwise facially invalid signatures; and

"(2) Unscrupulous sponsors and canvassers will continue to have an incentive to submit forged and otherwise facially

invalid signatures and make false statements to the Secretary of State.

"(c) It is further found and determined by the General Assembly that if this act becomes law:

"(1) Sponsors and canvassers of proposed initiative measures will be held more accountable for their actions in gathering signatures from registered voters; and

"(2) The earlier determination of the insufficiency of petitions rife with false statements, forged signatures, and otherwise facially invalid signatures will result in less confusion and frustration with the initiative process.

"(d) For the reasons stated in this section, the General Assembly finds that passage of this act will make sponsors and canvassers more accountable to the people of this state, facilitate the initiative process, conserve state resources, and help to restore the confidence and trust of the people in the initiative process."

Effective Dates. Acts 2013, No. 1413, § 22: Apr. 22, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that existing procedures for initiating and referring state laws and ordinances pursuant to Amendment 7 to the Arkansas Constitution and state statutes are inadequate to prevent fraudulent practices by sponsors and canvassers in obtaining ballot access; that this act addresses these inadequacies; and that this act is immediately necessary to prevent fraudulent practices because petition campaigns are either being conducted at the present time or may be conducted

immediately upon the adjournment of the General Assembly with respect to either initiated or referred measures. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

7-9-601. Hiring and training of paid canvassers.

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a statewide initiative or referendum petition unless the person receiving the money or item of value meets the requirements of this section.

(2) Before a signature is solicited by a paid canvasser the sponsor shall:

(A) Provide the paid canvasser with a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook;

(B) Explain the Arkansas law applicable to obtaining signatures on an initiative or referendum petition to the canvasser; and

(C)(i) Provide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

(ii) If additional paid canvassers agree to solicit signatures on behalf of a sponsor after the complete list is provided, the sponsor shall provide an updated list of all paid canvassers' names and current residential addresses to the Secretary of State.

(b) Before obtaining a signature on an initiative or referendum petition as a paid canvasser, a person shall submit in person or by mail to the sponsor:

(1) The full name and any assumed name of the person;

(2) The current residence address of the person and the person's permanent domicile address if the person's permanent domicile address is different from the person's current residence address;

(3) A signed statement taken under oath or solemn affirmation that states that the person has not pleaded guilty or nolo contendere to or been found guilty of a criminal offense involving a violation of the election laws, fraud, forgery, or identification theft in any state;

(4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on an initiative or referendum petition;

(5) A signed statement that the person has been provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook by the sponsor; and

(6) A photograph of the person taken within ninety (90) days of the submission of the information required under this section.

(c) A sponsor shall maintain the information required under this section for each paid canvasser for three (3) years after the general election.

(d) As used in this section, "paid canvasser" means a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting or obtaining a signature on a petition.

History. Acts 2013, No. 1413, § 21.

CHAPTER 10

NONPARTISAN ELECTIONS

SECTION.

7-10-101. [Repealed.]

7-10-102. Nonpartisan election of judges, justices, and prosecuting attorneys.

SECTION.

7-10-103. Filing as a candidate.

A.C.R.C. Notes. Acts 2013, No. 1110, § 9, provided: “The name of Arkansas Code Title 7, Chapter 10, is changed from ‘Nonpartisan Election of Judges’ to ‘Nonpartisan Elections’. The Arkansas Code Revision Commission shall make all changes in the Arkansas Code necessary to implement this section.”

7-10-101. [Repealed.]

Publisher’s Notes. This section, concerning definitions, was repealed by Acts 2013, No. 1110, § 10. The section was derived from Acts 2001, No. 1789, § 1.

7-10-102. Nonpartisan election of judges, justices, and prosecuting attorneys.

(a) The offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, and prosecuting attorney are nonpartisan offices.

(b)(1) The general elections for nonpartisan offices shall be held on the same date and at the same times and places as provided by law for preferential primary elections.

(2)(A) The names of nonpartisan candidates shall be:

- (i) Included on the ballots of the political parties; and
- (ii) Designated as nonpartisan candidates.

(B) Separate ballots containing the names of nonpartisan candidates shall be:

- (i) Prepared; and
- (ii) Made available to voters requesting a separate ballot.

(3) A voter shall not be required to vote in a political party’s preferential primary to be able to vote in a nonpartisan election.

(c)(1) A person shall not be elected to the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney unless the person receives a majority of the votes cast at the election for the office.

(2) In a nonpartisan election in which no person receives a majority of the votes cast, the two (2) candidates receiving the highest and next highest number of votes shall be certified to a runoff election, which shall be held on the same date and at the same times and places as the November general election.

(3) The names of the candidates in a nonpartisan runoff election shall be placed on the same ballots as used for the November general elections.

History. Acts 2001, No. 1789, § 2; 2007, No. 1020, § 20; 2009, No. 959, § 44; 2013, No. 1110, § 11. **Amendments.** The 2013 amendment rewrote the section.

7-10-103. Filing as a candidate.

(a) A candidate for a nonpartisan office under this chapter shall:

- (1) Pay a filing fee;
- (2) File a petition; or
- (3) File as a write-in candidate.

(b)(1) The State Board of Election Commissioners shall establish reasonable filing fees for nonpartisan offices.

(2)(A) A candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney who chooses to pay by filing fee shall pay the filing fee to the Secretary of State when the candidate files his or her political practices pledge.

(B) The period for paying filing fees and filing political practice pledges shall be the same as the party filing period under § 7-7-203.

(3)(A) The filing fees collected for the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge shall be remitted to the Treasurer of State for deposit into the Nonpartisan Filing Fee Fund for covering the cost of election expenses of the State Board of Election Commissioners.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, the filing fees collected for the office of prosecuting attorney shall be remitted to the Treasurer of State for deposit into the Nonpartisan Filing Fee Fund.

(ii) The first one hundred thousand dollars (\$100,000) collected annually from filing fees for the office of prosecuting attorney shall be remitted to the Treasurer of State for deposit into the Trial Court Administrative Assistant Fund.

(c)(1)(A)(i) A person may have his or her name placed on the ballot for a nonpartisan office without paying a filing fee by filing a petition in the manner provided for under this section. A petition for a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney shall be filed with the Secretary of State beginning at 12:00 noon fifty-three (53) days before the first day of the party filing period under § 7-7-203 and ending at 12:00 noon forty-six (46) days before the first day of the party filing period under § 7-7-203.

(ii) A nonpartisan candidate filing by petition shall file a political practices pledge with the petition.

(B)(i) The petition shall:

- (a) Be directed to the office with which it is to be filed; and
- (b) Request that the name of the candidate be placed on the ballot for the election set forth in the petition.

(ii) A candidate shall not begin circulating petitions earlier than sixty (60) days before the filing deadline.

(C)(i) The Secretary of State within forty-five (45) days of the filing of the petition shall:

- (a) Determine whether the petition contains the names of a sufficient number of qualified electors; and

(b) Verify the sufficiency of the petition.

(ii) The sufficiency of a petition filed under this section may be challenged in the same manner as provided by law for election contests under § 7-5-801 et seq.

(D) A qualified elector signing the petition must be a registered voter in the geographic area applicable to the position at the time he or she signs the petition. Each qualified elector shall provide on the petition his or her:

- (i) Printed name;
- (ii) Signature;
- (iii) Address;
- (iv) Date of birth; and
- (v) Date of signing.

(E) In determining the number of qualified electors in the state or in any court of appeals district, circuit court circuit, or district court district, the number of votes cast for Governor in the immediately preceding general gubernatorial election shall be conclusive of the number of all qualified electors in the state, circuit, or district for purposes of this section.

(2)(A) A candidate by petition for Justice of the Supreme Court shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the state; and

(ii) Ten thousand (10,000) qualified electors.

(B) A candidate by petition for Judge of the Court of Appeals shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the court of appeals district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(C) A candidate by petition for circuit judge shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the circuit for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(D) A candidate by petition for district judge shall file a petition signed by the lesser of:

(i) One percent (1%) of the qualified electors residing within the district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(E) A candidate by petition for prosecuting attorney shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(d)(1) Votes for a write-in candidate in a nonpartisan election shall not be counted or tabulated unless the candidate or his or her agent gives notice in writing of his or her intention to be a write-in candidate to:

(A) All county boards of election commissioners in the judicial district; and

(B) The Secretary of State.

(2) The written notice shall be given no later than eighty (80) days before the nonpartisan election.

(3) A write-in candidate shall file a political practices pledge at the same time as filing a notice of intention.

(e) A candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney shall file with the Secretary of State.

(f)(1)(A) A nonpartisan candidate shall not use more than three (3) given names, one (1) of which may be a nickname or another word used to identify the candidate to the voters.

(B)(i) A nonpartisan candidate may add as a prefix to his or her name the title or an abbreviation of an elective public office the candidate currently holds.

(ii) A candidate may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:

(a) The candidate is currently serving in a judicial position to which the candidate has been elected in the last election for the office, or

(b) The candidate:

(1) Is a candidate for the office of circuit judge or district judge;

(2) Is currently serving in the position of circuit judge or district judge as an appointee; and

(3) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The names and titles to be used by a candidate on the political practices pledge shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for a candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, and prosecuting attorney.

(3)(A) The name of each candidate shall be printed on the ballot in the form as certified by the Secretary of State.

(B) The county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners immediately shall notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(4) A candidate shall not change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

History. Acts 2001, No. 1789, § 3; § 2; 2013, No. 1110, § 12; 2013, No. 1286, 2005, No. 67, § 26; 2007, No. 1049, § 32; § 1.

2009, No. 959, § 45; 2009, No. 1407, §§ 1, **Amendments.** The 2013 amendment
2; 2011, No. 1185, § 14; 2013, No. 1075, by 1075 rewrote (f)(1)(B)(ii).

The 2013 amendment by 1110 rewrote (a)(2), (c)(1)(A)(i), (c)(1)(C), (d), (e), (f)(2), the section. and (f)(3)(A).

The 2013 amendment by 1286 rewrote

CHAPTER 11

SPECIAL ELECTIONS

SUBCHAPTER.

1. ELECTIONS TO FILL VACANCIES.

SUBCHAPTER 1 — ELECTIONS TO FILL VACANCIES

SECTION.

7-11-105. Special elections to be held on the second Tuesday of a month — Exceptions — Separate ballots.

SECTION.

7-11-107. Unopposed candidates.

7-11-105. Special elections to be held on the second Tuesday of a month — Exceptions — Separate ballots.

(a) Except as provided in this chapter, all special elections to fill vacancies in office and associated special primary elections shall be held on the second Tuesday of any month.

(b) A special election scheduled to occur in a month in which the second Tuesday of the month is a legal holiday shall be held on the third Tuesday of the month.

(c) A special election called in June of an even-numbered year shall be held on the fourth Tuesday of the month.

(d)(1) Special elections held in months in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.

(2) If a special election to fill a vacancy in office is held on the date of the preferential primary election, the names of the candidates in the special election shall be included on the ballot of each political party, and the portion of the ballot on which the special election appears shall be labeled with a heading stating “SPECIAL ELECTION FOR _____” with the name of the office set out in the heading.

(3) Separate ballots containing the names of the candidates to be voted on at the special election or nonpartisan election and any other measures or questions that may be presented for a vote shall be prepared and made available to voters requesting a separate ballot.

(4)(A) A voter shall not be required to vote in a political party’s preferential primary in order to be able to vote in the special election.

(B)(i) If the special election is held at the same time as the general election, the names of the candidates in the special election shall be included on the general election ballot, and the portion of the ballot

on which the special election appears shall be labeled with a heading stating "SPECIAL ELECTION FOR _____" with the name of the office set out in the heading.

(ii) The county board may include the special election on a separate ballot if the special election is held at the same time as the general election and the commission determines that a separate ballot is necessary to avoid voter confusion.

(e)(1) A special election to fill a vacancy in office shall be held not less than seventy (70) days following the date established in the proclamation, ordinance, resolution, order, or other authorized document for drawing for ballot position when the special election is to be held on the date of the preferential primary election or general election.

(2) If a special election to fill a vacancy in office is not held at the same time as a preferential primary election or general election, the special election shall be held not less than sixty (60) days following the date established in the proclamation, ordinance, resolution, order, or other authorized document for drawing for ballot position.

History. Acts 2009, No. 1480, § 47; 2011, No. 1185, § 15; 2013, No. 1110, § 13.

Amendments. The 2013 amendment substituted "election" for "judicial elections, if applicable" in (d)(3).

7-11-107. Unopposed candidates.

(a)(1) If there is only one (1) candidate after all deadlines for filing as a candidate have passed in a special election to fill a vacancy and if no other office or issue is on the ballot, the county board of election commissioners may provide that:

(A) Polling places shall not be open on election day and the election shall be conducted by absentee ballot and early voting only; or

(B) Only one (1) polling place shall be open and that polling place may be at the courthouse and may be staffed by the county clerk or as many poll workers as the county board deems necessary.

(2) If there is only one (1) candidate after all deadlines for filing as a candidate have passed in a special primary election to fill a vacancy, the county board of election commissioners shall certify the candidate as the nominee of the political party without holding a special primary election for the political party.

(b) In a county that uses voting machines or an electronic vote tabulating device, the county board may:

(1) Choose to use paper ballots counted by hand for the election; and
(2)(A) Provide that no voting machines shall be used in the election.

(B) If the county board chooses to provide that no voting machines shall be used in the election, any other provision in Arkansas law requiring the use of a voting machine shall not apply to this section.

History. Acts 2009, No. 1480, § 47; 2013, No. 580, § 1.

Amendments. The 2013 amendment redesignated the former introductory language of (a) as the introductory language

of (a)(1) and redesignated the remaining subdivisions accordingly; deleted “or special primary election” following “special election” in the introductory language of (a)(1); and added (a)(2).

TITLE 8

ENVIRONMENTAL LAW

(CHAPTERS 5-15 IN VOLUME 6A)

CHAPTER.

1. GENERAL PROVISIONS.
4. ARKANSAS WATER AND AIR POLLUTION CONTROL ACT.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

2. POWERS OF THE DEPARTMENT AND COMMISSION.

SUBCHAPTER 1 — GENERAL PROVISIONS

8-1-103. Powers and duties.

A.C.R.C. Notes. Acts 2013, No. 1202, § 38, provided: “REPORTING REQUIREMENTS. The Department shall present the following data to Legislative Council quarterly, due by the 15th day of the month following the quarter, beginning July 15, 2013:

“a) Number and type of environmental permits currently authorized by the Department and the Pollution Control and Ecology Commission in each environmental permit category;

“b) Total funds collected from permit fees for each permit category and the percent increase or decrease in permit fees annually;

“c) Description of each environmental permit application pending in each environmental permit category, the number of days each permit has been pending, and the reasons for delays in issuing permits for each permit that has been pending for more than 45 days;

“d) Number and type of enforcement actions initiated by the Department, the geographic location of each violation and the total fines and collections from

Supplemental Environmental Projects, the percent increase or decrease in fines levied annually and

“e) Description of all pending rulemaking activities and justifications thereof, including economic impact and environmental benefit analysis.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

Acts 2013, No. 1202, § 43, provided: “FAYETTEVILLE SHALE QUARTERLY REPORTING. The Arkansas Department of Environmental Quality shall report on a quarterly basis to the Arkansas Legislative Council or the Joint Budget Committee the number of inspections, any hearings, findings, orders, fines, or other agency regulatory or enforcement actions or activities involving the Fayetteville Shale. The quarterly reports shall be provided no later than the 15th day of the month immediately following the end of each quarter.

“The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.”

SUBCHAPTER 2 — POWERS OF THE DEPARTMENT AND COMMISSION

SECTION.

8-1-205. [Repealed.]

8-1-205. [Repealed.]

Publisher's Notes. This section, concerning the Mercury Task Force recommendations and implementation was re-

pealed by Acts 2013, No. 1153, § 1. The section was derived from Acts 1995, No. 1191, § 35; 1999, No. 1164, § 10.

CHAPTER 4**ARKANSAS WATER AND AIR POLLUTION CONTROL ACT**

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. WATER POLLUTION.
3. AIR POLLUTION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

8-4-103. Criminal, civil, and administrative penalties.

8-4-103. Criminal, civil, and administrative penalties.**(a) CRIMINAL PENALTIES.**

(1)(A) Any person that violates any provision of this chapter, that commits any unlawful act under it, or that violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than one (1) year;

(b) A fine of not more than twenty-five thousand dollars (\$25,000);

or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this chapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or department and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law

and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this chapter.

(B)(i) A person that violates subdivision (a)(2)(A) of this section shall be guilty of a felony.

(ii)(a) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(1) Imprisonment for not more than five (5) years;

(2) A fine of not more than fifty thousand dollars (\$50,000); or

(3) Both such fine and imprisonment.

(b) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person that purposely, knowingly, or recklessly causes pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony.

(B)(i) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to:

(a) Imprisonment for not more than twenty (20) years;

(b) A fine of not more than two hundred fifty thousand dollars (\$250,000); or

(c) Both such fine and imprisonment.

(ii) For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4) Notwithstanding the limits on fines set in subdivisions (a)(1)-(3) of this section, if a person convicted under subdivision (a)(1), subdivision (a)(2), or subdivision (a)(3) of this section has derived or will derive pecuniary gains from commission of the offenses, then the person may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The department may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this chapter and of any rules, regulations, orders, permits, or plans issued pursuant to this chapter;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this chapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or division of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this chapter and of any rules, regulations, permits, or plans issued pursuant to this chapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c)(1)(A) Any person that violates any provision of this chapter and regulations, rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

(B) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(2)(A) No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission.

(B) All hearings and appeals arising under this chapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229.

(C) These administrative procedures may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this chapter, including, but not limited to, natural resource damages.

(d)(1)(A) Before assessing a civil penalty under subsection (c) of this section, the Director of the Arkansas Department of Environmental Quality shall provide public notice of and a reasonable opportunity to comment on the proposed issuance of the order.

(B) If the civil penalty is being assessed under an order on consent, the order shall not be effective until thirty (30) days after the publication of notice of the order.

(C) Notice shall also be given to each member of the commission.

(D) If a civil penalty is being assessed for a violation that occurs within the corporate limits of any municipality in Arkansas, a copy of the public notice shall be delivered to the chief executive officer of the municipality in which the alleged violation occurred, along with a copy of any proposed order concerning the violation, and the municipality shall be given a reasonable opportunity to comment on the proposed order consistent with the public notice and comment requirements of this chapter and regulations promulgated under this chapter.

(2) Notice of any administrative enforcement order shall contain the following:

(A) The identity of the person or facility alleged to be in violation;

(B) The location by city or county of the alleged violation;

(C) A brief description by environmental media, that is, water, air, solid waste, or hazardous waste, impacted by the alleged violation;

(D) The type of administrative action proposed, that is, a consent order, a notice of violation, or an emergency order; and

(E) The amount of penalty to be assessed.

(3)(A) Any person that comments on a proposed assessment of a penalty under this subsection shall be given notice of any hearing held under this subsection.

(B) In any hearing held under this subsection, the person shall have a right to intervene upon timely application.

(4)(A)(i) If no adjudicatory hearing is held on a proposed order, any person that commented on the proposed order may petition the commission to set aside the order and provide an adjudicatory hearing.

(ii) A petition to set aside such an order must be filed with the commission within thirty (30) days of service of the order.

(B) If the evidence presented by the petitioner is material and was not considered in the issuance of the order and the commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide a hearing.

(C) If the commission denies a hearing under this subdivision (d)(4), it shall provide to the petitioner notice of and its reasons for the denial. The denial of such a hearing may be appealed pursuant to § 8-4-222.

(5) On its own initiative, the commission may institute review of any enforcement action taken by the director within thirty (30) days of the effective date of the order.

(e) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or subsection (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(f)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the director may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected that represent the costs, expenses, or damages of other agencies or subdivisions of the state shall be distributed to the appropriate governmental entity.

(g)(1) Pursuant to duly promulgated ordinances or regulations, any governmental entity permitted to operate a publicly owned treatment works shall have the authority to collect in a court of competent jurisdiction civil or criminal penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation by industrial users of pretreatment standards or requirements.

(2) Such a criminal or civil action may be initiated only after a majority vote of the entity's governing body resolves to pursue such an action.

(3) For the purpose of this subsection, each day of a continuing violation may be deemed a separate violation.

(h) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(i) Solicitation, as defined by § 5-3-301 et seq., or conspiracy, as defined by § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-6-204 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section that is a misdemeanor shall be a misdemeanor subject to:

(A) Fines not to exceed fifteen thousand dollars (\$15,000) per day of violation;

(B) Imprisonment for more than six (6) months; or

(C) Both such fines and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to:

(A) Fines up to thirty-five thousand dollars (\$35,000) per day;

(B) Imprisonment up to two (2) years; or

(C) Both such fines and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to:

(A) Fines up to seventy-five thousand dollars (\$75,000) per day;

(B) Imprisonment up to seven (7) years; or

(C) Both such fines and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section that is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to:

(A) Fines up to one hundred fifty thousand dollars (\$150,000) per day;

(B) Imprisonment up to fifteen (15) years; or

(C) Both such fines and imprisonment.

(j) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environ-

mental effects caused by the defendant's activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(k) A business organization or its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(1)(1) A person that uses a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one hundred dollars (\$100).

(2) A person that sells, distributes, or manufactures a cleaning agent in violation of this chapter is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding one thousand dollars (\$1,000).

(3)(A) The department may seize any cleaning agent held for sale or distribution in violation of this chapter.

(B) The seized cleaning agents are considered forfeited.

History. Acts 1949, No. 472, [Part 1], § 9; 1973, No. 262, § 10; 1975, No. 743, § 8; 1983, No. 733, § 1; A.S.A. 1947, § 82-1909; Acts 1987, No. 529, § 1; 1991, No. 884, § 1; 1991, No. 1057, §§ 3, 5; 1993, No. 163, § 10; 1993, No. 165, § 10; 1993, No. 454, § 2; 1993, No. 461, § 2; 1993, No. 731, § 3; 1995, No. 384, § 5; 1995, No. 895, § 1; 2003, No. 133, § 1; 2005, No. 1824, § 5; 2013, No. 1127, § 1.

Amendments. The 2013 amendment, in (i), inserted "as defined by § 5-3-301 et seq." and deleted "§ 5-3-301 et seq. and" following "as defined by."

SUBCHAPTER 2 — WATER POLLUTION

SECTION.

- 8-4-202. Rules and regulations.
- 8-4-203. Permits generally.
- 8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions.
- 8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.
- 8-4-222. Appeals — Entitlement.

SECTION.

- 8-4-223. Appeals — Notice.
- 8-4-224. Appeals — Parties.
- 8-4-225. Appeals — Venue.
- 8-4-226. Appeal — Response by commission and record.
- 8-4-227. Appeal — Review by circuit court.
- 8-4-230. Temporary variances and interim authority.

Effective Dates. Acts 2013, No. 954, § 3. Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that clarification of the methodology for developing, implementing, and assessing state water quality standards for minerals and the procedure for identifying and protecting the use of domestic water supplies is needed to avoid unnecessary regulation and the inefficient use and allocation of scarce resources; and that this act is immediately

necessary to ensure that existing regulatory requirements provide demonstrable benefits at reasonable costs and available resources are wisely allocated. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is

vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

8-4-202. Rules and regulations.

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under this chapter.

(b) Without limiting the generality of this authority, these rules and regulations may, among other things, prescribe:

(1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;

(2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and

(3)(A) Water quality standards, performance standards, and pretreatment standards.

(B) Water quality standards for minerals adopted under subdivision (b)(3)(A) of this section shall comply with the following requirements without precluding the evaluation of existing and readily available water quality-related data:

(i) The development and implementation of standards and criteria for minerals, including without limitation total dissolved solids, chlorides, and sulfates, and the assessment of a stream's or a stream segment's conformity with or attainment of a standard or criteria for minerals shall be based on the greater of the average flow in the stream or stream segment or four cubic feet per second (4 ft³);

(ii) The development and implementation of standards or criteria for minerals, including without limitation total dissolved solids, chlorides, and sulfates in order to protect the use of a domestic water supply, and the assessment of a stream's or a stream segment's conformity with or protection of the use of a domestic water supply shall be based on the greater of the average flow in the stream or stream segment or four cubic feet per second (4 ft³);

(iii) The assessment of a stream, stream segment, lake, or reservoir by the department for conformity with or attainment of a water quality standard for minerals for purposes of 33 U.S.C. § 1313(d) shall be based on the average concentration of minerals in the stream, stream segment, lake, or reservoir using at least sixty (60) actual measured samples taken at regular intervals over at least a five-year period;

(iv)(a) Except as provided in subdivision (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or maintain the use of a domestic water supply may be developed and implemented only for a stream segment, lake, or reservoir that:

- (1) Has an existing use as a domestic water supply; or
- (2) Is listed in the Arkansas Water Plan as a planned or potential domestic water supply.

(b) The domestic water supply use shall be designated for all bodies of water within the watershed of a lake or reservoir used as a public water supply unless the designated use is or has been removed under the regulations of the commission.

(c) The commission shall regularly publish in Arkansas Pollution Control and Ecology Commission Regulation No. 2 a list of the stream segments or reservoirs to which subdivision (b)(3)(B)(iv)(a) of this section applies;

(v)(a) Before commencing a study that would purport to allocate loads for permissible discharges to a stream, stream segment, lake, or reservoir in order to conform to a water quality standard, including without limitation a total maximum daily load study under 33 U.S.C. § 1313(d), the person conducting the study shall give written notice to all persons who are permitted to discharge directly or indirectly into the stream, stream segment, lake, or reservoir.

(b) The notice required under subdivision (b)(3)(B)(v)(a) of this section shall:

- (1) Identify the person responsible for conducting the study;
- (2) Explain the purpose of the study and the method that will be used to conduct the study; and
- (3) Provide instructions on obtaining additional information about the study.

(c) At the time a draft report of the study under this subdivision (b)(3)(B)(v) is prepared, a copy of the draft report shall be sent to each:

- (1) Person that holds a permit to discharge into the stream, stream segment, lake, or reservoir;
- (2) Public drinking water treatment system whose source water's watershed contains the stream, stream segment, lake, or reservoir; and
- (3) Person that has requested a copy of the results or report of the study.

(d) Before the study under this subdivision (b)(3)(B)(v) is finalized, the department shall conduct a public hearing on the study if requested by a:

- (1) Person holding a permit to discharge to the stream, stream segment, or reservoir; or
- (2) Public drinking water treatment system whose source water's watershed contains the stream, stream segment, lake, or reservoir.

(e) A study conducted under this subdivision (b)(3)(B)(v) shall not establish a waste load allocation for a stream, stream segment, lake,

or reservoir for purposes of protecting the use of a domestic water supply unless the department has first certified that:

(1) There is an existing domestic water supply use for the stream, stream segment, lake, or reservoir; or

(2) The stream segment or reservoir is listed in the Arkansas Water Plan as a planned or potential domestic water supply;

(vi) Within thirty (30) days after the receipt of an application for an individual permit to discharge into a stream, stream segment, or reservoir, the department shall certify to the permit applicant whether the stream segment or reservoir that will receive the proposed discharge is:

(a) An existing domestic water supply; or

(b) Listed in the Arkansas Water Plan as a planned or potential domestic water supply; and

(vii) The values for dissolved minerals listed in Arkansas Pollution Control and Ecology Commission Regulation No. 2, Reg. 2.511(B) shall not be used to evaluate or assess the attainment of water quality standards.

(C) A term or provision in a National Pollutant Discharge Elimination System permit or an order related to a National Pollutant Discharge Elimination System permit that exists as of August 16, 2013, but that has not yet become effective and does not comply with or was not developed according to subdivisions (b)(3)(B)(i)-(iv) of this section shall be:

(i) Stayed upon application to the commission by a person regulated under the noncompliant National Pollutant Discharge Elimination System permit term or condition or an order related to the noncompliant National Pollutant Discharge Elimination System permit; or

(ii) Waived upon application to the commission by a person regulated under the noncompliant National Pollutant Discharge Elimination System permit term or condition or an order related to the noncompliant National Pollutant Discharge Elimination System permit until an applicable National Pollutant Discharge Elimination System permit term or condition or an order related to an applicable National Pollutant Discharge Elimination System permit that complies with subdivisions (b)(3)(B)(i)-(iv) of this section becomes effective.

(c)(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation. Within sixty (60) days from the date of the submission of a petition, the commission shall either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's

written statement setting out the reasons for denial, and any document referenced therein.

(d)(1)(A) Before the adoption, amendment, or repeal of any rule or regulation or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

- (i) A statement of the substance of the intended action;
- (ii) A description of the subjects and issues involved; and
- (iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)(A) All interested parties shall be afforded a reasonable opportunity to:

- (i) Submit written data, information, views, opinions, and arguments; and
- (ii) Make oral statements concerning the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this section shall be entitled to judicial review of the action under this section.

(3)(A) If, in response to comments, the commission amends a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) shall not, however, require a second public notice if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

(4) The commission shall compile and maintain a record of rulemaking that shall contain:

(A)(i) A copy of all notices described in subsection (d) of this section and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the department must provide its own justification with appropriate references to the scientific and engineering literature or written studies conducted by the department;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the regulation and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria.

(2) No rule, regulation, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the department shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 5; 1973, No. 262, § 4; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 12; 1993, No. 165, § 12; 1997, No. 314, § 1; 1997, No. 1219, § 5; 2011, No. 195, § 1; 2013, No. 954, § 2.

A.C.R.C. Notes. Acts 2013, No. 954, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Under current interpretations by the United States Environmental Protection Agency, the development, implementation, and assessment of water quality standards required under the Clean Water Act, 33 U.S.C. § 1251 et seq., are to be based on sound scientific and statistical principles, among other things, and

should consider readily available data that is consistent with and relevant to the water use to be maintained;

“(2) Federal law requires the consideration of certain relevant factors, including natural variability and statistical variability over periods of time that are relevant to the water use to be maintained;

“(3) After consideration of readily available data, reliance on data that is not significant or meaningful, is incomplete, is not indicative of conditions relevant to the water use to be maintained, is speculative, is inconclusive or reasonably supportive of different conclusions, or is otherwise not well-suited to the purpose for which it is being used, has the potential to lead to unnecessary regulation and the inefficient use and allocation of scarce resources;

“(4) The State of Arkansas has a well-developed and long-standing program of sampling the quality of waters subject to various uses;

“(5) There is a rational basis found in sound scientific and statistical principles for using long-term averages in assessing mineral concentrations in a stream;

“(6) The Arkansas Department of Environmental Quality’s analysis of data from Arkansas streams demonstrates that four cubic feet per second (4 ft³/s) is the median flow for small streams, which makes this measure an appropriate indicator for stream flow when long-term flow data is not available, thereby avoiding unnecessary regulation and the inefficient use of state resources;

“(7) It is appropriate and consistent with sound scientific and statistical principles to use the greater of long-term average flows or four cubic feet per second (4 ft³/s) for assessing mineral concentrations in streams; and

“(8) Because of the existing technological and economic limits on treatability of dissolved minerals and the likely localized economic impacts of the treatability requirement, it is an inefficient use of scarce resources to apply domestic water supply uses and criteria to streams, stream segments, or other bodies of water that do not have an existing domestic water supply use or that do not have a demonstrated and reasonable potential to be used as a domestic water supply source.

“(b) The intent of this act is to:

“(1) Provide for the consideration of existing and readily available data and information relevant to the development, implementation, and assessment of water quality standards for minerals;

“(2) Provide standards for determining the data that should be considered and relied on by the State of Arkansas and its agencies for the development, implementation, and assessment of water quality standards for minerals; and

“(3) Direct state agencies to support the development, implementation, and assessment of water quality standards according to the provisions of this act.”

Amendments. The 2013 amendment rewrote (b)(3).

8-4-203. Permits generally.

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under such conditions as it may prescribe:

(1) To prevent, control, or abate pollution;

(2) For the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells; and

(3) For the installation, modification, or operation of disposal systems or any part of them.

(b)(1)(A)(i) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first demonstrating to the department its financial ability to cover the estimated costs of operating and

maintaining the nonmunicipal domestic sewage treatment works for a minimum period of five (5) years.

(ii) As used in this section, “nonmunicipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, county, or sewer improvement district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee’s failure to maintain or operate the device or system.

(iii) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.

(iv) Each permit application for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works each year for a period of five (5) years.

(v) A commercial nonmunicipal domestic sewage treatment works that does not include residential services is not required to post financial assurance under this section.

(B)(i) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or a state permit for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability to replace the new technology with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(ii) Each permit application for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that in the discretion of the department cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(2) The applicant’s financial ability to operate and maintain the nonmunicipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the department by:

(A) Obtaining insurance that specifically covers operation and maintenance costs;

(B) Obtaining a letter of credit;

(C) Obtaining a surety bond;

(D) Obtaining a trust fund or an escrow account; or

(E) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(3) The financial assurance required under subdivision (b)(2) of this section shall:

(A) Be posted to the benefit of the department;

(B) Provide that the financial instrument underlying the financial assurance cannot be cancelled without ninety (90) days prior written

notice addressed to the department's legal division chief as evidenced by a signed notice sent by certified mail with a return receipt requested; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to:

(i) Revoke or suspend the permit for the nonmunicipal domestic sewage treatment works; and

(ii) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance.

(4)(A) The owner or operator of a nonmunicipal domestic sewage treatment works shall establish and maintain financial assurance that demonstrates to the department's satisfaction the applicant's financial ability to ensure adequate operation and maintenance costs as required under subdivision (b)(2) of this section.

(B) Financial assurance shall provide that the department is the obligee or payee of the financial instrument underlying the financial assurance and shall otherwise comply with the regulations promulgated under this subchapter.

(C) The amount of financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to maintain and operate the permitted nonmunicipal domestic sewage treatment works in accordance with the permit and applicable regulations.

(D) The owner or operator shall provide continuous financial assurance for the operation and maintenance costs of a nonmunicipal domestic sewage treatment works until the department:

(i) Releases the owner or operator from the financial assurance requirements under this subchapter and the permit;

(ii) Approves the closure of the nonmunicipal domestic sewage treatment works; or

(iii) Approves the transfer of a permit and the replacement financial assurance under subdivision (b)(9) of this section.

(5)(A) Operation and maintenance costs shall be updated with each permit renewal to account for inflation and the condition of the nonmunicipal domestic sewage treatment works.

(B) The updated operation and maintenance costs based on the condition of the nonmunicipal domestic sewage treatment works required under subdivision (b)(5)(A) of this section shall be provided in a report certified by a professional engineer registered in the State of Arkansas and submitted to the department with each permit renewal.

(6)(A) If an owner or operator establishes a trust as financial assurance, the owner or operator shall either fully fund the trust or make payments into a trust fund.

(B)(i) If the owner or operator elects to make payments into a trust fund, the payments shall be made in equal monthly installments by the owner or operator.

(ii) The trust fund shall be fully funded within five (5) years of the issuance of the permit unless otherwise approved by the Director of the Arkansas Department of Environmental Quality.

(7)(A) The director may order that any financial assurance filed pursuant to this section be forfeited to the department if the director determines that the owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works.

(B) Following the determination of the director under subdivision (b)(7)(A) of this section, the department shall commence proceedings to collect on the financial assurance on which the department is the obligee or payee.

(C) For each permit, the financial instrument underlying the financial assurance shall be renewed or an alternate financial instrument shall be issued to maintain continuous financial assurance.

(D) If documentation of the renewed financial assurance or alternate financial assurance is not received by the department at least sixty (60) days before the expiration date of the existing financial instrument underlying the financial assurance, the department shall:

(i) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance; and

(ii)(a) Initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(b) A permit shall remain suspended until financial assurance is provided to the department in accordance with this subsection.

(E) The permittee is responsible for ensuring that documentation of the financial assurance and all renewals of financial instruments underlying the financial assurance are received by the department by the due date.

(8) The department shall deposit all forfeited funds into the Water Performance Bond Fund.

(9)(A)(i) Existing responsibilities and financial instruments underlying the financial assurance remain in full force and effect, and a permit shall not be transferred until the proposed new owner or operator has filed and the department has approved the required replacement financial assurance in accordance with the requirements of this section and applicable regulations.

(ii) The department shall approve or deny the replacement financial assurance offered under subdivision (b)(9)(A)(i) of this section within thirty (30) days of receipt of the completed permit transfer request.

(B) The department shall release to the former owner, operator, or issuing institution, if appropriate, the financial assurance that the former owner or operator filed if the department does not:

(i) Object to the replacement financial assurance within thirty (30) days of receipt of the completed permit transfer request; and

(ii) Deny the permit transfer.

(C) A completed permit transfer request shall be submitted on the forms required by the department and shall include the following:

(i) A disclosure statement, unless the nonmunicipal domestic sewage treatment works is exempt under § 8-1-106 or an Arkansas Pollution Control and Ecology Commission rule; and

(ii) Acceptable replacement financial assurance.

(D) The new owner or operator is responsible for ensuring that the financial assurance meets all applicable requirements.

(10) The department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the department's satisfaction that:

(A) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:

(i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;

(ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

(a) All discharge monitoring reports;

(b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

(c) Evidence that no more than ten percent (10%) of the nonmunicipal domestic sewage treatment works's submitted discharge monitoring reports show effluent violations; and

(d) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits issued by the department;

(iii) Maintained the services of a certified wastewater treatment operator, where applicable;

(iv)(a) Remained financially solvent, which shall be demonstrated by an independent certified public accountant's report on the examination of the owner's or operator's independently audited financial statements.

(b) The examination of financial statements under subdivision (b)(10)(A)(iv)(a) of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(v) Operated the nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the state as defined in the permit or as defined in the state's water quality standards; or

(B)(i) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the

area of the proposed nonmunicipal domestic sewage treatment works; and

(ii) The applicant has shown a history of financial responsibility and compliance with regulatory requirements.

(11) The department may withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.

(12) The department shall not directly operate nor be responsible for the operation of a nonmunicipal domestic sewage treatment works.

(c)(1)(A)(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the practice of receiving and storing said fluids from offsite for waste management.

(iii) Surface facilities associated with Class II injection wells are specifically excluded from the requirements of this subsection.

(iv) Land applications at the drilling or exploration site that are authorized under any general permit issued by the department are excluded from the requirements of this subsection.

(B) By October 1, 2009, each existing permitted facility regulated under this subsection shall submit to the department the following:

(i) A plan to close the permitted facility and make any site restoration deemed necessary by the department;

(ii) A detailed cost estimate to close and restore the permitted facility that meets the requirements of this subsection and is approved by the department; and

(iii) A financial mechanism that demonstrates to the department's satisfaction the permittee's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(C) The department shall not issue, modify, or renew a permit for facilities regulated under this subsection without the permit applicant first demonstrating to the department's satisfaction the applicant's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(D)(i) The amount of any financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to close the permitted facility in accordance with closure plans approved by the department.

(ii) The detailed cost estimate shall be prepared by an independent professional consultant.

(iii) On or before August 15 of each year, a permittee shall submit to the department for approval a detailed cost estimate to close and

restore the permitted facility in accordance with closure plans that have been approved by the department.

(E)(i) For new permits, the applicant shall submit to the department for approval a detailed cost estimate to close and restore the facility based on the proposed operation and capacity of the facility from the date the permit is issued through the following October 1.

(ii) For renewal or modification applications, the permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility based on closure plans that have been approved by the department.

(F)(i) For each permit, the financial assurance mechanism shall be renewed on October 1 of each year.

(ii) For each permit, documentation that the required financial assurance mechanism has been renewed beginning October 1 of that year shall be received by the department by September 15 of each year or the department shall initiate procedures to:

(a) Take possession of the funds guaranteed by the financial assurance mechanism; and

(b)(1) Suspend or revoke the permit under which the facility is operated.

(2) A permit shall remain suspended until a financial assurance mechanism is provided to the department in accordance with this subsection.

(iii) The permittee is responsible for ensuring that documentation of annual renewal is received by the department by its due date.

(2) The permittee or applicant shall demonstrate financial ability to adequately close or restore the land application or storage facility by:

(A) Obtaining insurance that specifically covers closure and restoration costs;

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;

(D) Creating a trust fund or an escrow account;

(E) Combining any of the instruments in (c)(2)(A)-(D); or

(F) Any other financial instrument approved by the director.

(3) A financial instrument required by this subsection shall:

(A) Be posted to the benefit of the department;

(B) Provide that the financial instrument cannot be cancelled without sixty (60) days prior written notice addressed to the department's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to revoke or suspend the facility's permit and whether to initiate procedures to take possession of the funds guaranteed by the financial assurance mechanism.

(4) Before the department may release a financial assurance mechanism, the department shall receive a certification by a professional engineer that the permitted facility has been closed and restored in

accordance with closure plans that have been approved by the department.

(5) The department is not responsible for the operation, closure, or restoration of a facility regulated under this subsection.

(d)(1) When an application for the issuance of a new permit or a major modification of an existing permit is filed with the department, the department shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by subdivision (d)(1) of this section shall advise that any interested person may request a public hearing on the permit application by giving the department a written request within ten (10) days of the publication of the notice.

(3) If the department determines that a hearing is necessary or desires such a hearing, the department shall schedule a public hearing and shall notify by first class mail the applicant and all persons that have submitted comments of the date, time, and place of the public hearing.

(e)(1)(A) Whenever the department proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

(i) A newspaper of general circulation in the county in which the facility that is the subject of the application is located; or

(ii) In the case of a statewide permit, in a newspaper of general circulation in the state.

(B) The notice shall afford any interested party thirty (30) calendar days in which to submit comments on the proposed permit action.

(C) At the conclusion of the public comment period, the department shall announce in writing its final decision regarding the permit application.

(2)(A)(i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department's permitting decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of an individual permitting action and as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) Nothing in this section, however, shall be construed as limiting the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review of the commission of a particular permitting action.

(B)(i) In the case of any discharge limit, emission limit, environmental standard, analytical method, or monitoring requirements, the

record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable regulation, this demonstration may be satisfied by reference to the regulation. In all other cases, the department must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the department.

(f)(1) All costs of publication of notices of applications and notices of proposals to grant permits under this section shall be the responsibility of the applicant.

(2) All costs of publication of notices of proposals to deny a permit under this section shall be the responsibility of the department.

(3) Any moneys received under subsection (f) of this section shall be classified as refunds to expenditures.

(g) Only those persons that submit comments on the record during the public comment period and the applicant shall have standing to appeal the decision of the department to the Arkansas Pollution Control and Ecology Commission.

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable if the applicant for the transfer:

(A) Notifies the director at least thirty (30) days in advance of the proposed transfer date;

(B) Submits a disclosure statement as required under § 8-1-106; and

(C) Provides any replacement financial assurance required under this section.

(2) Only the reasons stated in § 8-1-103(4), § 8-1-106(b)(1) and (c), and subdivision (b)(9) of this section constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

(i) In the event of voluminous comments, including without limitation a petition, the department may require the designation of a representative to accept any notices required by this section.

(j) The notice provisions of subsections (d) and (e) of this section do not apply to permit transfers or minor modifications of existing permits.

(k) This section in no way restricts local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under §§ 8-4-203 — 8-4-205.

(m)(1)(A)(i) The department may issue general permits under subsection (a) of this section.

(ii) A general permit is a statewide permit for a category of facilities or sources that:

(a) Involve the same or substantially similar types of operations or activities;

(b) Discharge or release the same type of wastes or engage in the same type of disposal practices;

(c) Require the same limitations, operating conditions, or standards;

(d) Require the same or similar monitoring requirements; and

(e) In the opinion of the director, may be regulated under a general permit.

(B)(i) Facilities or sources eligible to construct or operate under a general permit may obtain coverage by submitting a notice of intent to the department.

(ii) The director may require a person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(2)(A) A general permit is subject to the public notice requirements for statewide permits and the procedures under subsection (e) of this section.

(B) The department shall pay the costs of publication of notice of a draft permitting decision to issue a general permit.

(C) General permit coverage is not transferable unless the general permit provides for transfer.

(3)(A)(i) Before the submittal to public comment of a general permit that has not been previously issued, the department shall consider the economic impact and environmental benefit of the general permit and its terms and conditions upon the people of the State of Arkansas, including those entities that may apply for coverage under the general permit.

(ii) This requirement does not apply to general permits or terms or conditions that adopt the language of state or federal statutes or regulations without substantive change.

(B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.

(C) A general permit for which costs are specifically prohibited from being considered by state or federal law or regulation is exempt from the requirements of this subsection.

(D) The department may rely upon readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.

(4)(A) Only those persons that submit comments on the record during the public comment period shall have standing to appeal the decision of the department to the commission.

(B) The final permitting decision of the department on the general permit is subject to a hearing before the commission under §§ 8-4-

205, 8-4-212, 8-4-213, 8-4-214, and the administrative procedures promulgated by the commission.

(5)(A)(i) When a general permit includes an expiration date later than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit at least three hundred sixty-five (365) days before the expiration of the general permit.

(ii) When a general permit includes an expiration date earlier than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit as soon as reasonably possible.

(B) The department shall publish its final permitting decision to renew or not renew the general permit at least one hundred eighty (180) days before the expiration date of the general permit.

(C) If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final permit decision on the general permit.

(D) In the event the department makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual permit.

(6)(A) If a general permit is appealed and the general permit expires before the final decision by the director or by the commission to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect.

(B) All persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final administrative decision on the general permit.

(C) The director shall not approve new coverage under an expired general permit for any facility for which a notice of intent was not filed before expiration of the general permit.

History. Acts 1949, No. 472, [Part 1], § 3; 1961, No. 120, § 4; 1975, No. 743, § 4; 1979, No. 680, § 1; 1981, No. 826, § 1; A.S.A. 1947, § 82-1904; Acts 1993, No. 163, § 13; 1993, No. 165, § 13; 1995, No. 384, §§ 2, 3, 6-9; 1995, No. 895, § 2; 1997, No. 1219, § 5; 1997, No. 1312, § 1; 1999, No. 229, § 1; 1999, No. 1164, § 20; 2007, No. 832, § 1; 2007, No. 1005, § 2; 2009, No. 369, § 1; 2009, No. 409, § 1; 2011, No. 731, § 1; 2013, No. 402, §§ 1, 2; 2013, No. 1127, § 2.

A.C.R.C. Notes. Acts 2013, No. 1127, § 7, provided: "The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General As-

sembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Pursuant to Acts 2013, No. 1127, § 7, the amendment to this section by Acts 2013, No. 1127, § 2, is superseded by the amendments to this section by Acts 2013, No. 402, § 1.

Acts 2013, No. 1511, § 1, provided:

"(a)(1) The Arkansas Department of Environmental Quality shall not grant or deny coverage under a general permit for

a discharge from a Concentrated Animal Feeding Operations until the applicant publishes a notice of the Notice of Intent application under a general permit for Concentrated Animal Feeding Operations twice a week for six (6) consecutive weeks in a newspaper:

“(A) Of general statewide daily publication; and

“(B) Published in the county where the land described in the application is located.

“(2) The contents and form of the notice shall be prescribed by the Arkansas Department of Environmental Quality.

“(b)(1) A committee shall develop a policy concerning the procedure for an applicant to give sufficient notice of a Notice of Intent of application under a general permit for Concentrated Animal Feeding Operations.

“(2)(A) The committee shall consist of five (5) members.

“(B) Each of the following shall select one member:

“(i) The Arkansas Department of Environmental Quality;

“(ii) The Arkansas Agricultural Department; and

“(iii) The Arkansas Farm Bureau.

“(C) Two (2) members shall be appointed by the Governor.

“(3) The committee shall make its recommendation to Legislative Council on or before December 31, 2013.

“(c) This section shall be effective for one (1) year from the effective date of this act.”

Amendments. The 2013 amendment by No. 402 substituted “renew, or transfer” for “or renew” in (b)(1)(A)(i) and (b)(1)(B)(i); in (b)(1)(A)(ii), substituted “As used in” for “For purposes of,” deleted “borough” following “city, town,” and substituted “device or system” for “treatment works”; added (b)(1)(A)(v); inserted present (b)(3) through (b)(9) and redesignated and rewrote the remaining subdivisions accordingly; and rewrote (h).

The 2013 amendment by No. 1127 inserted “nonmunicipal domestic sewage” in (b)(1)(A)(ii).

8-4-205. Permits — Hearings upon denial, revocation, or modification and other permit actions.

(a) Any person that is denied a permit by the Director of the Arkansas Department of Environmental Quality or that has a permit revoked or modified or a request for permit transfer or modification denied shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith, upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

(b)(1) Only those interested persons, other than the applicant, that have submitted comments on the record regarding a proposed permit action during the public comment period shall have standing to request a hearing by the commission in connection therewith, upon written application made within thirty (30) days after the date of the Arkansas Department of Environmental Quality's final decision regarding the permit action.

(2) No interested party requesting a hearing under subsection (b) of this section may raise any issue in the hearing that was not raised in the public comments unless the party raising the issue shows good cause why such issue could not, with reasonable diligence, have been discovered and presented during the public comment period. The limitation in this subdivision (b)(2) shall not restrict the issues that may be addressed by the applicant in any appeal.

(3) A request for a hearing shall identify the permit action in question and its date and must include a complete and detailed

statement identifying the legal and factual objections to the permit action.

(c)(1)(A) Within thirty (30) days of the date the request for a hearing is filed with the commission secretary, a preliminary hearing will be conducted in the name of the commission by the commission's authorized hearing officer.

(B) Within a reasonable time after the preliminary hearing, the hearing officer shall enter a written decision determining whether the parties qualify as proper parties under subdivision (b)(1) of this section and whether the request conforms with the requirements under subdivisions (b)(2) and (3) of this section.

(C) Any party aggrieved by the decision entered pursuant to this subsection may, within ten (10) business days, request review by the commission.

(2)(A) Any contested decision and any final recommended decision of the hearing officer shall be transmitted to the commission.

(B) The commission shall consider the recommended decision of the hearing officer and shall either affirm the decision in whole or in part or reverse the decision in whole or in part.

(3) At this preliminary hearing, the hearing officer shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

(4) The commission shall review the director's decision de novo.

(5) The hearing officer shall schedule the hearing and other proceedings such that the appeal will be submitted to the commission for final commission action within one hundred twenty (120) days after the preliminary hearing unless the parties mutually agree to a longer period of time or the hearing officer establishes a longer period of time for just cause.

(6) During the pendency of the appeal to the commission:

(A) The denial of a permit shall stand;

(B) The issuance, modification, or revocation of a permit or that part of a permit that is the subject of the appeal shall be stayed;

(C)(i) Notwithstanding subdivisions (c)(6)(A) and (B) of this section, upon application by a party, the commission may provide for a stay, modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to a party.

(ii) As used in subdivision (c)(6)(C)(i) of this section, "substantial prejudice" means that the following will occur to the party seeking a stay, a modification of the terms of a stay, or the termination of a stay if the request is denied:

(a) Actual harm to health; or

(b) Adverse economic impact, including without limitation interruption, curtailment, or deferral of business or increased cost of construction or operation;

(D) Upon application by a party for a stay, to modify the terms of a stay, or to terminate a stay, the chair of the commission shall:

(i) Grant a temporary stay, modify the terms of a stay, or terminate a stay effective until the earlier of the next regularly scheduled

commission meeting or the next special meeting called for the purpose of considering the application; or

(ii) Place the application on the agenda for the next regularly scheduled commission meeting or call a special commission meeting for the purpose of considering the application if more than thirty (30) days will pass between the receipt of the application and the next regularly scheduled commission meeting; and

(E) Notwithstanding subdivision (c)(6)(D) of this section, the commission shall render a final decision on an application to provide for a stay, modify the terms of a stay, or terminate a stay within thirty (30) days of receipt of the application.

(7) The decision of the commission is final, and only those persons that are parties to the administrative appeal under this section shall have standing to appeal a permitting decision to circuit court as provided for in §§ 8-4-222 — 8-4-229.

History. Acts 1949, No. 472, [Part 1], § 5; 1973, No. 262, § 7; A.S.A. 1947, § 82-1021, § 1. 384, § 10; 1999, No. 1164, § 22; 2013, No. 1021, § 1.

Amendments. The 2013 amendment added (c)(6)(C)(ii) through (E).

8-4-218. Violations of chapter, orders, rules, etc. — Hearings — Notice.

(a) Whenever the Arkansas Department of Environmental Quality or its successor determines that there are reasonable grounds to believe that there has been a violation of any of the provisions of this chapter or any order, rule, or regulation of the Arkansas Pollution Control and Ecology Commission, it may give written notice to the alleged violator specifying the causes of complaint.

(b) The notice shall require that the matters that are the causes of complaint be corrected or that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges that are the causes of complaint.

(c) The notice shall be served upon the alleged violator in accordance with the provisions of § 8-4-214 not less than ten (10) days before the time set for the hearing.

History. Acts 1949, No. 472, [Part 1], § 5; 1961, No. 120, § 6; A.S.A. 1947, § 82-1021, § 1. 1906; Acts 1997, No. 1219, § 5; 1999, No. 1164, § 28; 2013, No. 1127, § 3.

Amendments. The 2013 amendment substituted “that are the causes of complaint” for “complained of” throughout (b).

8-4-222. Appeals — Entitlement.

An appeal may be taken from a final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission under §§ 8-4-223 — 8-4-229 by those parties that have standing and have exhausted their administrative appeals.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1993, No. 163, § 20; 1993, No. 165, § 20; 2013, No. 1021, § 2.

Amendments. The 2013 amendment inserted “under §§ 8-4-223 — 8-4-229,”

and deleted “to the circuit court of the county in which the business, industry, municipality, or thing involved is situated, in the manner provided in §§ 8-4-223 — 8-4-229” at the end.

8-4-223. Appeals — Notice.

(a)(1) Within thirty (30) days after service of a copy of the final order, rule, regulation, or other final determination of the Arkansas Pollution Control and Ecology Commission, the appellant may file a notice of appeal with the circuit court of the county in which the business, industry, municipality, or thing involved is situated.

(2) A copy of the notice of appeal shall be served upon the secretary of the commission by personal delivery or by mail with a return receipt requested within ten (10) days of filing with the circuit court.

(b)(1) The notice of appeal:

(A) Shall state the action of the commission appealed from;

(B) Shall specify the grounds of the appeal, including points of both law and fact that are asserted or questioned by the appellant; and

(C) May contain any other allegations or denials of fact pertinent to the appeal.

(2) The notice of appeal shall state an address within the state at which service of a response to the notice of appeal and other papers in the matter may be made upon the appellant.

(c) Upon filing the notice of appeal with the clerk of the circuit court, the circuit court shall have jurisdiction of the appeal.

(d)(1) Within ten (10) business days of service of the notice of appeal required under subdivision (a)(2) of this section, the owner or operator of the business, industry, municipality, or thing involved may file a motion to transfer the appeal from the circuit court to the Court of Appeals.

(2) Upon the filing of a motion under subdivision (d)(1) of this section, the appeal shall be transferred from the circuit court to the Court of Appeals.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 1; 1997, No. 1219, § 5; 2013, No. 1021, § 3.

Amendments. The 2013 amendment added (d).

8-4-224. Appeals — Parties.

(a)(1) The appellant, the Arkansas Pollution Control and Ecology Commission, and the owner or operator of the business, industry, municipality, or thing involved, if applicable, shall in all cases be the original parties to an appeal.

(2) The state, through the Attorney General or any other person affected, may become a party by intervention as in a civil action, upon showing cause therefor.

(3) The Attorney General shall represent the commission, if requested, upon all these appeals, unless he or she appeals or intervenes in behalf of the state.

(b) No bond or deposit for costs shall be required of the state or of the commission upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2013, No. 1021, § 4. inserted “and the owner or operator of the business, industry, municipality, or thing involved, if applicable” in (a)(1).

Amendments. The 2013 amendment

8-4-225. Appeals — Venue.

Except as provided in § 8-4-223(d), upon written consent of the parties or for cause shown after hearing upon notice to all parties, the venue of an appeal may be changed by order of the circuit court to the circuit court of a county in which the order, rule, regulation, or decision appealed from would take effect.

History. Acts 1949, No. 472, [Part 1], § 5; A.S.A. 1947, § 82-1906; Acts 2013, No. 1021, § 5.

Amendments. The 2013 amendment added the exception and inserted “circuit” preceding the first occurrence of “court.”

8-4-226. Appeal — Response by commission and record.

(a)(1) Within thirty (30) days after service of the notice of appeal on the Arkansas Pollution Control and Ecology Commission secretary, the Arkansas Pollution Control and Ecology Commission shall file with the clerk of the circuit court having jurisdiction of the appeal a response to the notice of appeal and the record upon which the final order, rule, regulation, or other final determination complained of was entered.

(2) The thirty-day period for filing a response to the notice of appeal and the record by the commission may be extended by the court for cause shown for not more than an additional sixty (60) days.

(3)(A) The record shall consist of:

(i) A copy of any application or petition, all pleadings, or other material paper whereon the action of the commission appealed from was based;

(ii) A statement of any findings of fact, rulings, or conclusions of law made by the commission;

(iii) A copy of the final order, rule, regulation, or other final decision appealed from; and

(iv) All testimony, exhibits, and other evidence submitted to the commission in the case.

(B) The parties to the appeal may stipulate that only a specified portion of the record shall be filed with the circuit court.

(4) A response to the notice of appeal filed by the commission shall consist of any statements, admissions, or denials upon the questions of law or fact raised in the notice of appeal as the commission may deem pertinent.

(b) Within the time allowed for making and filing the response, a copy of the response shall be mailed to or served upon the appellant or the appellant's attorney.

(c)(1) The allegations or new matter in the response shall be deemed to be denied by the appellant unless expressly admitted, and no further pleadings shall be interposed.

(2) Otherwise, the allegations of the notice of appeal and response shall have like effect as the pleadings in a civil action and shall be subject to like proceedings, so far as applicable.

(d) With respect to an appeal that is before the Court of Appeals as the result of a motion to transfer an appeal under § 8-4-223(d), the requirements applicable to the commission's response and the record shall be determined under the Rules of Appellate Procedure — Civil.

History. Acts 1949, No. 472, [Part 1], § 5; 1965, No. 183, § 4; A.S.A. 1947, § 82-1906; Acts 1997, No. 896, § 2; 1997, No. 1219, § 5; 2013, No. 1021, § 6.

Amendments. The 2013 amendment added (d).

8-4-227. Appeal — Review by circuit court.

(a) The appeal shall be heard and determined by the circuit court upon the issues raised by the notice of appeal and response according to the rules relating to the trial of civil actions, so far as applicable.

(b) If, before the date set for the hearing, application is made to the circuit court for leave to present additional evidence and the circuit court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the Arkansas Pollution Control and Ecology Commission, then the circuit court may order that the additional evidence be taken before the commission upon such conditions as may be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing circuit court.

(c)(1)(A) The review shall be conducted by the circuit court without a jury and shall be confined to the record.

(B) However, in cases of alleged irregularities in procedure before the commission that are not shown in the record, testimony may be taken before the circuit court.

(2) The circuit court shall, upon request, hear oral argument and receive written briefs.

(d) The circuit court may affirm the decision of the commission or vacate or suspend the decision, in whole or part, and remand the case to the commission for further action in conformity with the decision of the circuit court if the action of the commission is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the commission's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Not supported by substantial evidence of record; or

(6) Arbitrary, capricious, or characterized by abuse of discretion.

History. Acts 1949, No. 472, [Part 1], § 5; 1985, No. 284, § 1; A.S.A. 1947, § 82-1906; Acts 1995, No. 895, § 3; 1997, No. 896, § 3; 1997, No. 1219, § 5; 2013, No. 1021, § 7.

Amendments. The 2013 amendment inserted "circuit" before "court" throughout the section and added the (c)(1)(A) and (B) designations.

8-4-230. Temporary variances and interim authority.

(a)(1) Unless otherwise expressly prohibited by federal law, the Director of the Arkansas Department of Environmental Quality may, for compelling reasons and good cause shown, grant:

(A) A temporary variance from the requirements of a permit issued by the Arkansas Department of Environmental Quality; or

(B) Interim authority to construct or operate during the application review and permit issuance process.

(2) Such temporary variances or interim authority shall not exceed a period of ninety (90) days, except when a longer period is justified by circumstances beyond the applicant's control. The department may grant a request for an extension of a temporary variance or interim authority at any time prior to the expiration date.

(3) The department may require an initial processing fee of two hundred dollars (\$200) for a request for a temporary variance or an interim authority request. This fee shall not be required for requests for an extension of any temporary variance or interim authority.

(b)(1) In considering a request for a temporary variance under subdivision (a)(1)(A) of this section, the director shall consider:

(A) The environmental and public health effects of the temporary variance;

(B) Any economic advantage obtained by the party requesting the temporary variance over other similarly situated facilities that are operating in accordance with similar permit conditions and that have not requested a temporary variance; and

(C) Whether strict compliance would result in the substantial curtailment or closing down of an existing or proposed business, plant, or operation.

(2) In addition, the director may take into account the following factors in considering a request under subdivision (a)(1) of this section:

(A) Whether strict compliance with permit terms is inappropriate because of conditions beyond the control of the person requesting the temporary variance;

(B) Whether the temporary variance request is prompted by recurrent or avoidable compliance problems;

(C) Whether a review of the operational history of the requesting facility reveals relevant information; and

(D) Whether the public interest will be served by a temporary variance.

(c) When considering any request for interim authority during the application review and permit issuance process pursuant to subdivision

(a)(1)(B) of this section, the director may take into account the following factors in addition to the applicable factors of subsection (b) of this section:

(1) Whether the applicable permitting applications were timely and completely submitted;

(2) Whether there has been a delay in the final permitting action caused by conditions beyond the control of the person requesting the interim authority;

(3) Whether contractual or other business obligations will become due before a proper permit can be issued; and

(4) Whether the public interest will be served by construction or operation during the application review and permit issuance process.

(d) After a review of the applicable factors, the director may:

(1) Grant an unconditional variance or interim authority to the requesting party;

(2) Grant a conditional temporary variance or interim authority to the requesting party. Such conditions shall be designed to be protective of human health and the environment and must be clearly stated or referenced in the temporary variance or interim authority document; or

(3) Deny the request for a temporary variance or interim authority. If a denial is issued, the director shall clearly state the reason or reasons for the denial in a written response to the applicant.

(e)(1) The director's decision to grant or deny a temporary variance or interim authority to construct or operate shall be issued within ten (10) days of receipt of the request for the temporary variance or interim authority and shall be publicly noticed in a newspaper of general circulation in the state within five (5) business days of the director's decision. The applicant shall be responsible for the expense of the publication of a decision to grant a temporary variance or interim authority. The department shall be responsible for the expense of the publication of a decision to deny a temporary variance or interim authority.

(2) A person may object to the director's decision within ten (10) business days of the notice.

(3) A temporary variance or interim authority granted by the director is contingent upon the right of any person to object.

(4) An action taken by the applicant in reliance upon the grant of a temporary variance or interim authority during the application review and permit issuance process is strictly at the applicant's own risk, and an action or expenditure by the applicant during this period s does not accrue equities in the applicant's favor.

(5) The public notice requirement under this section shall not apply to the director's decision to grant an extension of a temporary variance or interim authority.

(f) The director may also for compelling reasons or good cause shown revoke or modify the conditions of a temporary variance or interim authority previously granted.

(g)(1) An applicant that is denied a temporary variance or interim authority or that has a temporary variance or interim authority

revoked or a third party that submitted timely objections during the application review and permit issuance process described in subsection (e) of this section may appeal the director's final decision to the Arkansas Pollution Control and Ecology Commission upon written request made within ten (10) days after notice of the director's decision.

(2)(A) Unless otherwise agreed to by the party requesting review of the director's decision, an appeal under subdivision (g)(1) of this section shall be considered by the commission at the next regularly scheduled commission meeting following submission of the written request.

(B) However:

(i) The decision of the director shall remain in effect during the appeal;

(ii) The commission's review shall be completed as expeditiously as possible; and

(iii) A final decision shall be issued by the commission within thirty (30) days unless all parties agree to extend the review time.

(C)(i) The commission may affirm, amend, modify, or revoke the director's final decision.

(ii) An affirmation of the director's final decision shall be based on the determination by the commission that the:

(a) Director adequately considered all relevant and applicable factors under subsections (b) and (c) of this section in arriving at the final decision; and

(b) Public interest will be served by the affirmation of the director's final decision.

(iii) An amendment, modification, or revocation of the director's final decision shall be based on a determination by the commission that the:

(a) Director's final decision was unduly burdensome, impractical, or unreasonable given the circumstances;

(b) Director failed to adequately consider the applicable factors under subsections (b) and (c) of this section; or

(c) Public interest will be served by the amendment, modification, or revocation of the director's final decision.

(h) A party that submits an objection to the director's decision under subdivision (e)(2) of this section and is aggrieved by a commission decision on a request for a temporary variance or interim authority may appeal as provided by applicable law.

History. Acts 1995, No. 943, § 1; 1999, No. 147, § 1; 2013, No. 1021, §§ 8–10.

Amendments. The 2013 amendment substituted "expressly prohibited by federal law" for "prohibited by preemptive federal law" in (a)(1); added (b)(1)(C); added "in considering a request under subdivision (a)(1) of this section" to the end of the introductory paragraph in (B)(2); deleted former (b)(2)(B); in (e)(1),

inserted "be issued within ten (10) days of receipt of the request for the temporary variance or interim authority and shall" and substituted "in a newspaper of general circulation in the state within five (5) business days" for "within ten (10) business days"; added the ending to (g)(1), beginning with "to the Arkansas Pollution Control"; rewrote (g)(2)(A); substituted "thirty (30) days" for "sixty (60) days" in

(2)(B)(iii); added (g)(2)(C); and inserted “that submits an objection to the director’s decision under subdivision (e)(2) of this section and is” in (h).

SUBCHAPTER 3 — AIR POLLUTION

SECTION.	SECTION.
8-4-303. Definitions.	8-4-318. National Ambient Air Quality Standards implementation.
8-4-311. Powers generally.	
8-4-317. State implementation plans generally.	

Effective Dates. Acts 2013, No. 1302, § 6: Apr. 18, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current policy of the Arkansas Department of Environmental Quality of implementing the National Ambient Air Quality Standards through stationary source permitting is more stringent than the practices of other states in the region, thereby discouraging the expenditure of capital improvement funds for economic development and environmental improvement projects within the State of Arkansas; and that this act is immediately necessary to align the policies for

implementation of National Ambient Air Quality Standards and the development of state implementation plans to those of the federal government and other states. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

8-4-303. Definitions.

As used in this subchapter:

- (1) “Air-cleaning device” means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere;
- (2) “Air contaminant” means any solid, liquid, gas, or vapor or any combination thereof;
- (3) “Air contamination” means the presence in the outdoor atmosphere of one (1) or more air contaminants that contribute to a condition of air pollution;
- (4) “Air contamination source” means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who owns or operates the building, premises, or other property in, at, or on which such source is located or the facility, equipment, or other property by which the emission is caused or from which the emission comes;
- (5) “Air pollution” means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration that are materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to

property, or that unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby;

(6) "Area of the state" means any city or county, or portion thereof, or other substantial geographical area of the state as may be designated by the Arkansas Pollution Control and Ecology Commission;

(7) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(8) "Department" means the Arkansas Department of Environmental Quality or its successor;

(9) "Director" means the Director of the Arkansas Department of Environmental Quality or its successor;

(10) "Major source construction" means the construction of a new major stationary source or a major modification of an existing major stationary source as the terms "major stationary source" and "major modification" are defined in 40 C.F.R. Part 51.165, if applicable, or 40 C.F.R. Part 51.166, as they existed on July 1, 2012;

(11) "NAAQS state implementation plan" means a state implementation plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., for the attainment and maintenance of a specified National Ambient Air Quality Standard;

(12) "National Ambient Air Quality Standard" or "NAAQS" means a national primary or secondary ambient air quality standard established under Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and 40 C.F.R. Part 50;

(13) "Person" means any individual, partnership, firm, company, public or private corporation, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state, or any other legal entity whatever that is recognized by law as the subject of rights and duties; and

(14) "State implementation plan" means a plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., and that is developed by the department and submitted to the United States Environmental Protection Agency for review and approval.

History. Acts 1949, No. 472, [Part 2], § 3, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1933; Acts 1997, No. 1219, § 6; 1999, No. 1164, § 30; 2013, No. 1302, § 1.

Amendments. The 2013 amendment added present (10) through (12) and (14).

8-4-311. Powers generally.

(a) The Arkansas Department of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government, and with affected groups in the furtherance of the purposes of this chapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and regulations relating to pollution of the air;

(8) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;

(9)(A) Cooperate with and receive moneys from the federal government or any other source for the study and control of air pollution.

(B) The department is designated as the official state air pollution control agency for such purposes;

(10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution and requiring the adoption of remedial measures to prevent, control, or abate air pollution;

(11) Institute court proceedings to compel compliance with the provisions of this chapter and rules, regulations, and orders issued pursuant to this chapter;

(12) Exercise all of the powers in the control of air pollution granted to the department for the control of water pollution under §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229; and

(13) Develop and implement state implementation plans provided that the commission shall retain all powers and duties regarding promulgation of rules and regulations under this chapter.

(b) The Arkansas Pollution Control and Ecology Commission shall have the power to:

(1)(A) Promulgate rules and regulations for implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgate rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgate rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;

(10)(A) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations, including requiring a permit or other regulatory authorization from the department, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the department, to prevent, control, or abate air pollution.

(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit if proper application is made for the permit.

(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this section.

(D) Any person that is denied a permit by the department or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

(F)(i) An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state regulations promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from department inaction.

(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

(iii) For the purposes of judicial review, either a commission denial or the failure of the department to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action;

(11)(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any regulation proposed pursuant to this authorization shall be reported to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof prior to its final promulgation; and

(12) In the case of a state implementation plan, provide the right to appeal a final decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegate under § 8-4-317.

History. Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31; 2013, No. 1302, §§ 2, 3.

Amendments. The 2013 amendment added (a)(13) and (b)(12).

8-4-317. State implementation plans generally.

(a) In developing and implementing a state implementation plan, the Arkansas Department of Environmental Quality shall consider and take into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b)(1)(A) Whenever the department proposes to finalize a state implementation plan submittal for review and approval by the United States Environmental Protection Agency, it shall cause notice of its proposed action to be published in a newspaper of general circulation in the state.

(B) The notice required under subdivision (b)(1)(A) of this section shall afford any interested party at least thirty (30) calendar days in which to submit comments on the proposed state implementation plan submittal in its entirety.

(C)(i) In the case of any emission limit, work practice or operational standard, environmental standard, analytical method, air dispersion modeling requirement, or monitoring requirement that is incorporated as an element of the proposed state implementation plan submittal, the record of the proposed action shall include a written explanation of the rationale for the proposal, demonstrating the reasoned consideration of the factors in § 8-4-312 as applicable, the need for each measure in attaining or maintaining the National Ambient Air Quality Standards, and that any requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable federal regulation, the demonstration required under subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the regulation. In all other cases, the department shall provide its own justification with appropriate reference to the scientific and engineering literature considered or the written studies conducted by the department.

(2)(A) At the conclusion of the public comment period and before transmittal to the Governor for submittal to the United States Environmental Protection Agency, the department shall provide written notice of its final decision regarding the state implementation plan submittal to all persons who submitted public comments.

(B)(i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department's final decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of a state implementation plan decision and

serving as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) This section does not limit the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review by the Arkansas Pollution Control and Ecology Commission of a particular state implementation plan decision.

(c)(1) Only those persons that submit comments on the record during the public comment period have standing to appeal the final decision of the department to the commission upon written application made within thirty (30) days after service of the notice under subdivision (b)(2)(A) of this section.

(2) An appeal under subdivision (c)(1) of this section shall be processed as a permit appeal under § 8-4-205. However, the decision of the Director of the Arkansas Department of Environmental Quality shall remain in effect during the appeal.

History. Acts 2013, No. 1302, § 4.

8-4-318. National Ambient Air Quality Standards implementation.

(a)(1) The Arkansas Department of Environmental Quality shall develop NAAQS state implementation plans.

(2) Each NAAQS state implementation plan shall include the measures necessary for the attainment and maintenance of the National Ambient Air Quality Standard in each air quality control region or portion of an air quality control region within the state.

(b)(1) Except with regard to permitting decisions for major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., National Ambient Air Quality Standards are not effective until adopted by the Arkansas Pollution Control and Ecology Commission under § 8-4-311(b).

(2) Except as required for the permitting of major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., or otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the department shall not mandate for any stationary source measures for the attainment and maintenance of a National Ambient Air Quality Standard until such measures are included in the applicable NAAQS state implementation plan and the NAAQS state implementation plan has been submitted to the United States Environmental Protection Agency. However, this subdivision (b)(2) does not limit or delay the effectiveness of any applicable emission limit or standard promulgated by the United States Environmental Protection Agency under Sections 111, 112, or 129 of the Clean Air Act, 42 U.S.C. § 7411, § 7412, and § 7429.

(3) Unless otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the department shall not require or consider air dispersion modeling of an air contaminant for

which a National Ambient Air Quality Standard has been established in air permitting decisions for stationary sources except:

(A) As required by Part C of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and the federal regulations promulgated thereto, for the permitting of major source construction;

(B) If necessary in the judgment of the department, with respect to permitting of a temporary source under 42 U.S.C. § 7661c(e); or

(C) Pollutant-specific or facility-specific air dispersion modeling explicitly required by an applicable NAAQS state implementation plan submitted to the United States Environmental Protection Agency.

(c) This section does not prohibit the department from conducting and considering air dispersion modeling as necessary for the:

- (1) Development of a state implementation plan; or
- (2) Development of a general permit under § 8-4-203.

History. Acts 2013, No. 1302, § 5.

